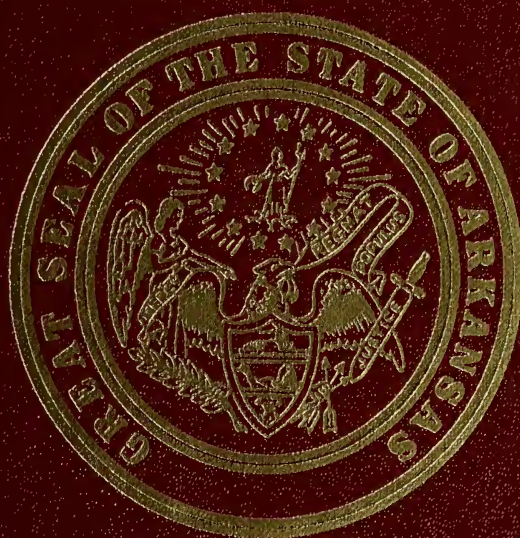


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VOLUME 20B

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TITLE 20: PUBLIC HEALTH AND WELFARE (CHAPTERS 45-86)

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Under the Direction and Supervision of the
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Sources

This volume contains legislation enacted by the Arkansas General Assembly through the 2001 Regular Session. Annotations are to the following sources:

Arkansas Supreme Court and Arkansas Court of Appeals Opinions through 2001 Ark. Lexis 284 (May 3, 2001).

Federal Supplement through May 8, 2001.

Federal Reporter 3d Series through May 8, 2001.

United States Supreme Court Reports, through May 8, 2001.

Bankruptcy Reporter through May 8, 2001.

Arkansas Law Notes through the 1999 Edition.

Arkansas Law Review through Volume 53, No. 3, p. 749.

University of Arkansas at Little Rock Law Journal through Volume 23, No. 2, p. 540.

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User's Guide

Many of the Arkansas Code's research aids, as well as its organization and other features, are described in the User's Guide, which appears near the beginning of Volume 1 of the Code.

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PUBLIC HEALTH AND WELFARE

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20-45-101. County representation on certain boards required.

20-45-102. County representation on cer-

tain boards — Failure to provide.

20-45-101. County representation on certain boards required.

(a) The membership of the governing board of any nonprofit organization which receives mental health funds from the State of Arkansas on a per capita basis shall include at least one (1) member from each of the various counties for which funds are received by the organization.

(b) However, no county shall have more than a simple majority of members on the board unless the county has more than fifty percent

(50%) of the population of the area from which the nonprofit organization receives mental health funds.

History. Acts 1971, No. 93, § 1; A.S.A. 1947, § 59-1201.

20-45-102. County representation on certain boards — Failure to provide.

No nonprofit organization receiving mental health funds from the State of Arkansas on a per capita basis shall be eligible to receive state mental health funds on a per capita basis unless the governing board of the organization is apportioned among the counties for which funds are received in the manner required in § 20-45-101.

History. Acts 1971, No. 93, § 2; A.S.A. 1947, § 59-1202.

CHAPTER 46

MENTAL HEALTH AGENCIES AND FACILITIES

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2. ARKANSAS STATE HOSPITAL BOARD. [REPEALED.]
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Publisher's Notes. Acts 1971, No. 433, § 1 provided: "It is hereby found and determined by the General Assembly that the laws relating to the State Hospital, mental health, and mentally ill persons have been enacted piecemeal over a period of many years and that a great number of these laws are duplicating, conflicting, outmoded, and in urgent need of clarification and codification. It is the purpose and intent of the General Assembly in enacting this Act to clarify, update, and codify the various laws of the State relating to

the State Hospital, mental health, and mentally ill persons."

Acts 1971, No. 433, ch. 10, § 1, provided: "It is the specific intent of the codification of the mental health laws contained in this Act to only effect those laws pertaining to mental health. Nothing in this Act shall be deemed to repeal or modify the provisions of Act 411 of 1955. No other laws shall be affected in any manner, nor shall the inclusion of such laws within this code in any way repeal or affect those laws as they otherwise apply."

RESEARCH REFERENCES

ALR. Civil liability for physical measures undertaken in connection with treatment of mentally disordered patient. 8 ALR 4th 464.

Suicide of patient: liability for. 19 ALR 4th 7.

Right to notice and hearing prior to

revocation of conditional release status of mental patient, 29 ALR4th 394.

Self-inflicted injuries of patient: hospital's liability for. 36 ALR 4th 117.

Liability for patient's injury or death resulting from attempted escape or escape. 37 ALR 4th 200.

Parent's or relative's rights of visitation of adult child against his or her wishes, 40 ALR4th 846.

Limitations of actions applicable to third person's action against psychiatrist, psychologist, or other mental health practitioner, based on failure to warn persons against whom patient expressed threats, 41 ALR4th 1078.

Propriety of transferring patient found not guilty by reason of insanity to less restrictive confinement, 43 ALR5th 777.

Nonconsensual treatment of involuntarily committed mentally ill persons with neuroleptic or antipsychotic drugs as vio-

lative of state constitutional guarantees, 74 ALR4th 1099.

Right of state prison authorities to administer neuroleptic or antipsychotic drugs to prisoner without his consent, 75 ALR4th 1124.

Harvesting organs, propriety of surgically invading incompetent or minor for benefit of third party, 4 ALR5th 1000.

Am. Jur. 40A Am. Jur. 2d, Hospitals, § 1 et. seq.

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41 C.J.S., Hospitals, § 1 et seq.

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SECTION.

20-46-101. Implementation.

20-46-102. Liability of hospital utilization committee members.

20-46-103. Records of State Board of Health, hospitals, etc., confidential — Exceptions and liability.

SECTION.

20-46-104. Records of Arkansas State Hospital confidential.

20-46-105. Report concerning emotionally disturbed youth.

20-46-106. Emotionally disturbed youth treated out of state.

Effective Dates. Acts 1971, No. 433, ch. 10, § 4: Mar. 29, 1971. Emergency clause provided: "It is hereby found and determined by the General Assembly that the various mental health laws have been enacted over a period of one hundred years and are not properly organized so that they can be easily found; that many of these laws are antiquated and archaic and are in great need of updating in order to be useful; that the mental health laws need to be placed in a comprehensive code for easy reference by those persons interested in and who use these laws; and that only by the immediate passage of this Act can this be achieved. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall become effective from and after its passage and approval."

Acts 1985, No. 779, § 33: July 1, 1985. Emergency clause provided: "It is hereby found and determined by the Seventy-Fifth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a

two (2) year period; that the effectiveness of this Act on July 1, 1985 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1985 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1985."

Acts 1989 (1st Ex. Sess.), No. 100, § 14: July 1, 1989. Emergency clause provided: "It is hereby found and determined by the Seventy-Seventh General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1989 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an

extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1989 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1989."

Acts 1997, No. 179, § 38: Feb. 17, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 10 of the First Extraordinary Session of 1995 abolished the Joint Interim Committee on Public Health, Welfare, and Labor and in its place established the House Interim Committee and Senate Interim Committee on Public Health, Welfare, and Labor; that various sections of the Arkansas Code refer to the Joint Interim Committee on Public Health, Welfare, and Labor and should be corrected to refer to the House and Senate Interim Committees on Public Health, Welfare, and Labor; that this act so provides; and that this act should go into effect immediately in order to make the laws compatible as soon as possible. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become ef-

fective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1997, No. 312, § 24: Feb. 28, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that the duties of the Joint Interim Committee on Children and Youth shall be transferred to the Senate Interim Committee on Children and Youth; that such transfer should begin upon the adjournment of this Regular Session; and that unless this emergency clause is adopted the transfer will not occur until ninety days past the Regular Session. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

20-46-101. Implementation.

The State Board of Health and the Board of Trustees of the University of Arkansas are authorized and directed to work with the Arkansas State Hospital to implement the services and objectives of this act.

History. Acts 1971, No. 433, ch. 2, § 7; A.S.A. 1947, § 59-307.

Meaning of "this act". Acts 1971, No. 433 is codified as §§ 9-14-104, 16-86-101 — 16-86-113, 20-46-101 — 20-46-104, 20-46-201 — 20-46-205 [repealed], 20-46-301,

20-46-303, 20-46-309 — 20-46-314, 20-47-109, 20-47-401 — 20-47-406, 20-48-102, 20-49-101, 20-49-102, 20-49-201 — 20-49-207, 20-49-301 — 20-49-304, 20-50-101 — 20-50-106, former 20-64-801, former 20-64-803 — 20-64-811.

20-46-102. Liability of hospital utilization committee members.

(a) Physicians and others appointed to hospital utilization review committees for the purpose of determining questions relating to the hospitalization of Medicare patients under the provisions of Pub. L. 89-97, which is the Medicare law, shall be immune from liability with

respect to decisions made as to these questions so long as the physicians or others act in good faith and without malice.

(b) Nothing in this act shall be construed to relieve any patient's personal physician of any liability which he or she may have in connection with the treatment of the patient.

History. Acts 1971, No. 433, ch. 2, § 9; A.S.A. 1947, § 59-309.

U.S. Code. Public Law 89-97 referred to in this section is codified primarily in

Meaning of "this act". See note to § 20-46-101. U.S.C. Titles 26 and 42.

20-46-103. Records of State Board of Health, hospitals, etc., confidential — Exceptions and liability.

(a) All information, interviews, reports, statements, memoranda, or other data of the State Board of Health, the Arkansas Medical Society and allied medical societies, or from in-hospital staff committees of licensed hospitals, but not the original medical records pertaining to the patients, which are used in the course of medical studies for the purpose of reducing morbidity or mortality, as provided in this act, shall be strictly confidential and shall be used only for medical research.

(b) Any authorized person, hospital, sanatorium, nursing home, rest home, or other organization may provide information, interviews, reports, statements, memoranda, or other data relating to the condition and treatment of any person to any of the following for use in the course of studies for the purpose of reducing morbidity or mortality:

(1) The state board, the University of Arkansas Medical Center, the Arkansas Medical Society or any committee or allied society thereof, or any other national medical organization approved by the state board or any committee or allied medical society therein; or

(2) Any in-hospital staff committee of licensed hospitals.

(c) No liability for damages or other relief shall arise or be enforced against any authorized person, institution, or organization by reason of having provided information or material, by reason of having released or published the findings and conclusions of the groups to advance medical research and medical education, or by reason of having released or published generally a summary of the studies.

(d)(1) In all events, the identity of the person whose condition or treatment has been studied shall be confidential and shall not be revealed under any circumstances.

(2) Any information furnished shall not contain the name of the person upon whom information is furnished and shall not violate the confidential relationship of patient and doctor.

(3) All information, interviews, reports, statements, memoranda, or other data, but not the original medical records pertaining to the patient, furnished by reason of this act, and any findings or conclusions resulting from studies are declared to be privileged communications which may not be used, offered, or received in evidence in any legal proceeding of any kind or character. Any attempt to use or offer any

information, interviews, reports, statements, memoranda, or other data, findings, or conclusions or any part thereof, but not the original medical records pertaining to the patient, unless waived by the interested parties, shall constitute prejudicial error in any such proceeding.

(e) Nothing in this section shall be construed to prevent any court from subpoenaing the medical records of any patient.

History. Acts 1971, No. 433, ch. 2, § 10; A.S.A. 1947, § 59-310.

Meaning of "this act". See note to § 20-46-101.

20-46-104. Records of Arkansas State Hospital confidential.

(a) The records, reports, statements, notes, and other information furnished to the Arkansas State Hospital and its divisions for mental research by individuals, by private, public, or governmental hospitals, and by other agencies for the purpose of mental research are not admissible as evidence in any court or in any administrative hearing or procedure. The employees or agents of the Arkansas State Hospital shall not be compelled to divulge any of the records, reports, statements, notes, or other information. All individuals, private, public, or governmental hospitals, or other agencies who furnish the records, statements, notes, or other information shall not be held liable for its reportings to the Arkansas State Hospital and its divisions.

(b) All records, reports, statements, notes, and other information which has been assembled or procured by the Arkansas State Hospital and its divisions for the purpose of research and study which name or otherwise identify any persons and any confidential records within the custody and control of the Arkansas State Hospital or its authorized agents and employees may be used only for the purpose of research and study for which assembled or procured.

(c) It is unlawful for any person to give away or otherwise to disclose to any person who is not engaged in research and study at the Arkansas State Hospital and its divisions as described in this section any of the records, reports, statements, notes, or other information which name or otherwise identify any person or any confidential records.

(d) Any person who violates any provision of this act is guilty of a misdemeanor and upon conviction shall be fined not more than five hundred dollars (\$500) and imprisoned not more than six (6) months, or both.

(e)(1) Nothing in this section applies to or restricts the use or publicizing of statistics, data, or other materials which summarize or refer to any records, reports, statements, notes, or other information in the aggregate and which do not refer to or disclose the identity of any individual person.

(2) Nothing in this section shall be construed to prevent any court from subpoenaing the medical records of any patient.

History. Acts 1971, No. 433, ch. 2, § 11; A.S.A. 1947, § 59-311.

Meaning of "this act". See note to § 20-46-101.

20-46-105. Report concerning emotionally disturbed youth.

(a) The Department of Human Services shall report quarterly to the Legislative Council and the House Interim Committee on Public Health, Welfare, and Labor and the Senate Interim Committee on Public Health, Welfare, and Labor or appropriate subcommittees thereof the utilization of residential treatment facilities in the Residential Treatment Program for Emotionally Disturbed Youth.

(b) This report shall include the number of youth treated, the percentage of utilization of available facilities, and the number of beds available but not used.

(c) This information shall be provided both on a statewide basis and on the basis of each treatment facility.

(d) The Legislative Council may request at any time that such additional information as it deems necessary be provided by the department.

(e) The deputy director of the appropriate division of the department as determined by the Director of the Department of Human Services shall certify by his or her signature that the information contained in these reports is correct to the best of his or her knowledge.

History. Acts 1985, No. 779, § 21; 1997, No. 179, § 31. terim Committees” for “Joint Interim Committee,” and inserted “or appropriate subcommittees thereof.”

Amendments. The 1997 amendment, in (a), substituted “House and Senate In-

20-46-106. Emotionally disturbed youth treated out of state.

(a)(1) It is the intent of the General Assembly that treatment for emotionally disturbed youth within the State of Arkansas will result in higher quality care provided for less cost when compared with similar services delivered out of state.

(2) Prior to making an out-of-state placement, the Department of Human Services shall make and document the determinations established in subsection (b) of this section. If an out-of-state placement is made without documenting the determinations, payment for services shall not be authorized.

(3) The department shall provide a report monthly to the Senate Interim Committee on Children and Youth reflecting the number of youths receiving services out of state, including plans for their return to Arkansas. The monthly reports shall also include the determinations made prior to each out-of-state placement pursuant to subsection (b) of this section.

(b) Before an emotionally disturbed youth is placed in an out-of-state treatment facility, the department shall make and document the following determinations:

(1) Whether the emotionally disturbed youth has been appropriately and accurately diagnosed;

(2) Whether an appropriate treatment facility exists within the state;

(3) Whether there is an appropriate treatment facility in a border state;

(4) Whether the facility being considered has the most appropriate program;

(5) Whether the program requires payment of board, and if so, what is the amount;

(6) Whether the total cost for treatment in the out-of-state facility exceeds the cost for treatment in state;

(7) Where youth residing at the facility attend school, and whether the school is accredited;

(8) What type of professional staff is available at the facility;

(9) What mechanisms are in place to address problems that are not within the purview of the program;

(10) What other considerations exist in addition to the youth's emotional problems such as other medical conditions, travel expenses, wishes of the youth, best interests of the youth, effect of out-of-state placement on the youth, and proximity to the emotionally disturbed youth's family; and

(11) What alternatives exist to out-of-state placement, and the benefits and detriments of each alternative.

(c) The determinations made under subsection (b) of this section shall be included in the youth's case file and shall be reviewed and considered by the juvenile judge.

History. Acts 1989 (1st Ex. Sess.), No. 100, § 8; 1995, No. 765, § 1; 1995, No. 809, § 1; 1997, No. 312, § 15.

Amendments. The 1997 amendment substituted "Senate Interim Committee" for "Joint Committee" in (a)(3).

SUBCHAPTER 2 — ARKANSAS STATE HOSPITAL BOARD

SECTION.

20-46-201 — 20-46-206. [Repealed.]

20-46-201 — 20-46-206. [Repealed.]

A.C.R.C. Notes. Pursuant to § 1-2-207, the amendment to § 20-46-206 by Acts 1995, No. 1132 was superseded by the repeal of this subchapter by Acts 1995, No. 1261. Section 20-46-206 was amended by Acts 1995, No. 1132, § 1, to read as follows:

"Lease of certain lands. (a) The State Hospital Board is authorized to enter into an agreement or agreements with the War Memorial Stadium Commission, the Board of Trustees of the University of Arkansas System, the Board of Visitors of the University of Arkansas at Little Rock, or to the Arkansas Travelers Baseball Club, Inc. to lease to the commission, to the board of trustees, to the board of

visitors, or to the baseball club those lands belonging to or under the supervision of the State Hospital Board which are located in close proximity to the War Memorial Stadium, Ray Winder Field or within the City Fair Park. The agreement or agreements may provide for the leasing of lands for such period of time and under such other terms as may be agreed upon by the parties.

"(b) All funds received by the State Hospital Board under agreements for the lease of State Hospital lands as authorized in this section shall be deposited in the State Treasury and credited to the fund out of which the State Hospital is supported."

Publisher's Notes. This subchapter, concerning state hospital board, was repealed by Acts 1995, No. 1261, § 18. The subchapter was derived from the following sources:

20-46-201. Acts 1971, No. 433, ch. 1, § 1; 1983, No. 131, §§ 1-3, 5; 1983, No. 135, §§ 1-3, 5; 1985, No. 1037, § 1; A.S.A. 1947, §§ 6-623 — 6-626, 59-201.

20-46-202. Acts 1971, No. 433, ch. 1,

§ 2; 1985, No. 348, § 7; A.S.A. 1947, §§ 59-202, 59-301.

20-46-203. Acts 1971, No. 433, ch. 1, §§ 1, 3; A.S.A. 1947, §§ 59-201, 59-203.

20-46-204. Acts 1971, No. 433, ch. 1, § 4; A.S.A. 1947, § 59-204.

20-46-205. Acts 1971, No. 433, ch. 1, § 5; A.S.A. 1947, § 59-205.

20-46-206. Acts 1987, No. 417, §§ 1, 2; 1995, No. 1132, § 1.

SUBCHAPTER 3 — COMMUNITY MENTAL HEALTH CENTERS

SECTION.

20-46-301. Department of Human Services — Division of Mental Health Services — Powers and duties.

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20-46-306. Minimum standards — Purchasing procedures.

20-46-307. Minimum standards — Records of purchases and service contracts.

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20-46-308. Minimum standards — Periodic audits.

20-46-309. Composition and qualifications of staff and boards.

20-46-310. Duty to provide screenings and evaluation studies.

20-46-311. Training programs and institutes.

20-46-312. Assistance, cooperation, and purchase of services by certain governmental units.

20-46-313. Distribution of funds.

20-46-314. Federal grants.

20-46-315. Transfer of state's matching share.

Cross References. Department of Human Services, transfer to and administration through divisions of, § 25-10-103.

Preambles. Acts 1972 (Ex. Sess.), No. 54 contained a preamble which read: "Whereas, the Arkansas State Hospital through its Mental Health Authority has been restricted in developing a comprehensive state mental health program, and Whereas, many medically indigent patients are unable to maintain good mental health because of their inability to purchase the necessary medications, and Whereas, the Community Mental Health Centers and Clinics throughout the state do not have adequate funds to furnish medically indigent patients the necessary medications for maintenance of their mental health, and Whereas, it is the intention of this act to provide for assistance to the Community Mental Health Centers and Clinics in the purchase of medication for medically indigent patients so that

unnecessary rehospitalization may be prevented, then..."

Effective Dates. Acts 1971, No. 433, ch. 10, § 4: Mar. 29, 1971. Emergency clause provided: "It is hereby found and determined by the General Assembly that the various mental health laws have been enacted over a period of one hundred years and are not properly organized so that they can be easily found; that many of these laws are antiquated and archaic and are in great need of updating in order to be useful; that the mental health laws need to be placed in a comprehensive code for easy reference by those persons interested in and who use these laws; and that only by the immediate passage of this Act can this be achieved. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall become effective from and after its passage and approval."

Acts 1972 (Ex. Sess.), No. 54, § 6: Feb. 18, 1972. Emergency clause provided: "It is hereby found and determined that it is necessary to provide medication required for the treatment of mental illness for medically indigent patients in order to avoid unnecessary and expensive hospitalization and, therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect after its passage and approval."

Acts 1985, No. 348, § 16: July 1, 1985.

Acts 1987, No. 1053, § 25: July 1, 1987. Emergency clause provided: "It is hereby found and determined by the Seventy-Sixth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1987 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1987 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being neces-

sary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1987."

Acts 1993, No. 410, § 8: Mar. 9, 1993. Emergency clause provided: "It is hereby found and determined by the Seventy-Ninth General Assembly of the State of Arkansas that Section 17 of Act 1082 of 1991 anticipates the Greater Little Rock Community Mental Health Center will cease being a part of a state agency and will become a private non-profit center; that mental health patients in the Greater Little Rock area will receive more efficient and effective delivery of mental health services from a private non-profit center; and that several immediate changes in Arkansas law are necessary to clarify the status of the Greater Little Rock Community Mental Health Center and to expedite the transfer of authority and the transition of patients, employees, and facilities to the non-profit status. Therefore, in order to expedite the delivery of more efficient and effective mental health services in the Central Arkansas area, an emergency is hereby declared to exist, and this act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

RESEARCH REFERENCES

ALR. Applicability and application of zoning regulations to single residences employed for group living of mentally retarded persons, 32 ALR4th 1018.

Validity, construction, and effect of statute requiring consultation with, or approval of, local governmental unit prior to locating group home, halfway house, or similar community residence for the mentally ill, 51 ALR 4th 1096.

Propriety of transferring patient found not guilty by reason of insanity to less restrictive confinement, 43 ALR5th 777.

Ark. L. Rev. Arkansas Involuntary Civil Commitment: In the Rear Guard of the Due Process Revolution, 32 Ark. L. Rev. 294.

CASE NOTES

Cited: Sebastian County Equalization Bd. v. Western Ark. Counseling & Guid-

ance Ctr., Inc., 296 Ark. 207, 752 S.W.2d 755 (1988).

20-46-301. Department of Human Services — Division of Mental Health Services — Powers and duties.

(a) The Department of Human Services shall have the authority and power to create and maintain a Division of Mental Health Services and to provide services for community mental health clinics and centers, which shall be administered through such divisions, offices, sections, or units of the department as may be determined by the Director of the Department of Human Services.

(b) The department shall have the authority to establish or assist in the establishment and direction of those mental health clinics and centers in local and regional areas of the state which shall be operated under such divisions, offices, sections, or units of the department as may be determined by the director.

(c) The department shall have the authority to lease or to assign the use of any property and equipment owned by the department, including furniture, fixtures, and any and all kinds of office equipment and supplies, to those community mental health clinics and centers to assist them in the advancement of mental health in the state.

(d) The department shall engage in programs of mental health education in cooperation with the state's governmental units and established mental health education organizations, organized civic groups, lay organizations, and recognized mental health authorities, utilizing therefor the facilities of those organizations and groups for the advancement of mental health.

(e)(1) In the event that a state-operated community mental health center acquires private nonprofit status, the division shall have the authority to lease employees of the division to perform services for the private nonprofit community mental health center to ensure the continued delivery of satisfactory levels of mental health services consistent with the goals and objectives of the department and the division.

(2) The director shall have the authority to negotiate an employee leasing arrangement with the private nonprofit community mental health center as an on-going contract to perform mental health services for the center. The arrangement shall provide, at a minimum:

(A) For reimbursement for all leased division employee financial obligations with respect to wages, employment taxes, and employee benefits of each employee providing services for the center and for reimbursement of administrative costs associated with the leased employees;

(B) That all leased employees are covered by workers' compensation insurance provided in conformance with laws of the state and which may be provided by either the department or the center;

(C) That all leased employees shall be limited to providing services to clients or in support of clients which are consistent with the goals and objectives of the division and the department;

(D) That the division and the department shall not be vicariously liable for the liabilities of the center, whether contractual or otherwise;

(E) That the center shall provide liability insurance for the employees and indemnify the state for any actions of the employees; and

(F) That the leasing arrangement shall not be effective for a period of time to exceed each state fiscal biennium, and that payment and performance obligations of the arrangement are subject to the availability and appropriation of funds for the employees' salaries and other benefits.

(3) Employer responsibilities for leased employees shall be shared by the department and the community mental health center. The department shall be responsible for the administration and management of employee compensation and all employee benefit and welfare plans. The center may exercise day-to-day supervision and control of the employees' delivery of services in conformity with all division and department policies and procedures.

History. Acts 1971, No. 433, ch. 2, § 1; 1985, No. 348, § 7; A.S.A. 1947, § 59-301; Acts 1993, No. 410, § 2.

A.C.R.C. Notes. Acts 2001, No. 1829, § 1, provided: "SECTION 1. (a) The General Assembly finds that the Division of Mental Health Services of the Department of Human Services and the Bureau of Alcohol and Drug Abuse Prevention of the Department of Health would operate more effectively if combined within a single organizational structure.

"(b) There is created a Task Force on Mental Health and Alcohol and Drug Abuse Prevention to study and make recommendations on the most effective and efficient organizational structure to house a combined Division of Mental Health Services and Bureau of Alcohol and Drug Abuse Prevention.

"(c)(1) Six (6) months after the effective date of this act, and quarterly thereafter, the Task Force on Mental Health and Alcohol and Drug Abuse Prevention shall provide reports to the House and Senate Interim Committees on Public Health, Welfare, and Labor detailing progress toward submitting a final recommendation.

"(2) The Task Force shall submit its final recommendations to the chairpersons of the House and Senate Interim Committees on Public Health, Welfare, and Labor and to the directors of the Department of Human Services and the Department of Health on or before March 1, 2002.

"(d) The Task Force on Mental Health and Alcohol and Drug Abuse Prevention shall be comprised of seven (7) members to include the Directors of the Department of Health and the Department of Human Services, one (1) member appointed by the Governor, two (2) members appointed by the House chair of the House and Senate Interim Committees on Public Health, Welfare, and Labor, and two (2) members appointed by the Senate chair of the House and Senate Interim Committees on Public Health, Welfare, and Labor.

"(e) The Department of Human Services and the Department of Health shall cooperate with the Task Force on Mental Health and Alcohol and Drug Abuse Prevention and shall provide the Task Force with such reasonable assistance and resources as the Task Force determines is necessary to complete its work.

"(f)(1) Unless otherwise amended, the provisions of this subchapter shall remain in effect until June 30, 2003.

"(2) The Task Force on Mental Health and Alcohol and Drug Abuse Prevention is abolished effective June 30, 2003."

Publisher's Notes. The authority and power of the State Hospital Board to create and maintain a Division of Mental Health and provide services for community mental health clinics and centers and child guidance centers were transferred to the Department of Human Services by Acts 1985, No. 348, § 7.

20-46-302. Department of Human Services — Power to regulate — Funding.

(a) The Arkansas State Hospital shall have the power to establish guidelines, rules, and regulations in the administration of this section.

(b)(1) The Arkansas State Hospital through the Department of Human Services is authorized and empowered to assist community mental health centers and clinics in providing funds for medication required for the treatment of mental illness for medically indigent patients at a rate not to exceed five cents (5¢) per capita of the geographical area served by those community mental health centers or clinics.

(2) The most recent federal census will be used in determining the per capita of the area on which an allocation is made.

(c)(1) Disbursement of funds authorized by this section shall be limited to the appropriations for the agency and funds made available by law for the support of the appropriations.

(2) The restrictions of the Arkansas Procurement Law, § 19-11-201 et seq.; the General Accounting and Budgetary Procedures Law, § 19-4-101 et seq.; the Revenue Stabilization Law, § 19-5-101 et seq.; and other fiscal control laws of the state, where applicable, and regulations promulgated by the Department of Finance and Administration, as authorized by law, shall be strictly complied with in disbursement of the funds.

History. Acts 1972 (Ex. Sess.), No. 54, §§ 1, 2, 4; A.S.A. 1947, §§ 59-312 — 59-314.

20-46-303. Standards generally.

In approving or rejecting community mental health clinics for the purpose of mental health services, the Director of the Department of Human Services shall consider the following factors:

(1) Adequacy of mental health services provided by the clinic, including mental health outpatient diagnostic and treatment services;

(2) Rehabilitative services for patients suffering from mental or emotional disorders;

(3) Collaborative and cooperative services with public health and other state, county, city, and private groups for programs of prevention and treatment of mental illness and other psychiatric, psychological, and social disabilities;

(4) Consultative services to schools, to courts, and to health and welfare agencies, both public and private;

(5) Informational and educational services to the general public and to lay and professional groups; and

(6) Study and training activities in the field of mental health.

History. Acts 1971, No. 433, ch. 2, § 3; A.S.A. 1947, § 59-303.

20-46-304. Minimum standards — Adoption.

(a) The Division of Mental Health Services, shall adopt appropriate minimum standards of performance in the delivery of mental health services by community mental health centers. The standards shall include professional standards and accounting, statistical, and auditing standards.

(b) In addition, the division shall adopt reasonable minimum standards and requirements for conflict of interest policies and purchasing procedures for community mental health centers.

History. Acts 1985, No. 786, § 1;
A.S.A. 1947, § 59-317.

20-46-305. Minimum standards — Pledge to conform and filing of policies.

(a) As a condition of certification or recertification by the Department of Human Services, each community mental health center shall furnish to the department a resolution of its governing board expressing the board's pledge and intent to conform to the professional standards and accounting, statistical, and auditing standards prescribed by the board.

(b) Each community mental health center shall file, as a condition of certification or recertification by the department, with the department a copy of the conflict of interest policies and purchasing policies of the board. The conflict of interest and purchasing policies shall conform to the minimum standards for the policies adopted by the department.

History. Acts 1985, No. 786, § 2;
A.S.A. 1947, § 59-318.

20-46-306. Minimum standards — Purchasing procedures.

(a) The minimum standards prescribed by the Division of Mental Health Services for purchases by community mental health centers shall, so far as practicable, be comparable to the limits set for small purchases pursuant to the purchasing procedures established by the State Procurement Director and shall require competitive bidding for purchases exceeding those limits.

(b) However, the purchasing standards established by the division shall not require competitive bids for contracts for professional services in the health, medical, legal, and accounting fields, but shall require the contract entered into by a center to be approved by the chief executive officer and the governing board of the center.

(c) The standards promulgated by the department shall also require the center to maintain adequate documentation concerning procedures used and the justification for the awarding of the professional contracts.

History. Acts 1985, No. 786, § 3;
A.S.A. 1947, § 59-319.

20-46-307. Minimum standards — Records of purchases and service contracts.

(a) The minimum purchasing standards and procedures prescribed by the Division of Mental Health Services for community mental health centers shall not require preaudit or prepurchase approval by the state of purchases made by the centers but shall require all centers to maintain complete records regarding all such purchases and all professional services contracts entered into by the respective centers for a period of at least two (2) years and shall provide that the records shall be open for public inspection during that period.

(b) The division shall review the purchasing procedures and professional services contracts records of each mental health center on a random basis as a part of the regular certification site review to determine compliance with §§ 20-46-304 — 20-46-308.

History. Acts 1985, No. 786, § 4;
A.S.A. 1947, § 59-320.

20-46-308. Minimum standards — Periodic audits.

(a) Each community mental health center shall undergo a periodic audit as may be required by the Division of Mental Health Services. Each audit shall reflect the compliance or noncompliance with the provisions of §§ 20-46-304 — 20-46-308.

(b) Each audit shall be furnished to the division and shall be subject to review by the Legislative Joint Auditing Committee and its staff.

(c) Nothing in §§ 20-46-304 — 20-46-308 shall repeal any authority which now exists for the Legislative Joint Auditing Committee and its staff to audit all or any part of the records of any community mental health center.

History. Acts 1985, No. 786, § 5;
A.S.A. 1946, § 59-321.

20-46-309. Composition and qualifications of staff and boards.

The Director of the Department of Human Services shall require the following as to the composition and professional qualifications of the clinic or center staff and control and direction of the clinic or center:

(1) The community mental health center or clinic should have an administrator who will be responsible for the management and affairs of the agency in accordance with regulations set forth by the National Institute of Mental Health, and as required by local boards of directors;

(2) Medical responsibility for each patient must be vested in a physician. If that physician is not a psychiatrist, psychiatric consultation must be available to the center staff on a continuing and regularly scheduled basis;

(3) The clinic or center staff shall include other professional staff such as psychologists, social workers, and nurses with such qualifica-

tions, responsibilities, and time on the job as shall correspond with the size and capacity of the clinic; and

(4) Each clinic or center from which services may be purchased shall be under the control or direction of a county or community board of directors or trustees of a corporation not for profit or a political subdivision of the state. The local board shall have at least one (1) member from each of the various counties for which funds are received by the organization. However, no county shall have more than a simple majority of members on the board unless that county has within it more than fifty percent (50%) of the population of the total area from which the corporation received mental health funds.

History. Acts 1971, No. 433, ch. 2, § 3;
A.S.A. 1947, § 59-303.

20-46-310. Duty to provide screenings and evaluation studies.

Mental health centers in this state, whether local or regional, which have been approved by the Director of the Department of Human Services shall provide, upon request of the courts of record in this state, screening and evaluation studies of such persons as shall be referred to the mental health center or clinic by the court.

History. Acts 1971, No. 433, ch. 2, § 8;
A.S.A. 1947, § 59-308.

20-46-311. Training programs and institutes.

(a) The Arkansas State Hospital may from time to time during each year provide such consultation and conduct such institutes and training programs on a state, regional, district, county, or community level as may be necessary to coordinate, inform, and assist in the training of staff members of the various approved clinics of the state in mental health services and techniques.

(b) The Arkansas State Hospital may reimburse staff members for reasonable and necessary expenses incurred in attending these institutes and training programs.

History. Acts 1971, No. 433, ch. 2, § 6;
A.S.A. 1947, § 59-306.

20-46-312. Assistance, cooperation, and purchase of services by certain governmental units.

Any state board, state agency, county, municipality, court, school district, hospital district, or other political subdivision of the state or any county, circuit, or juvenile court is authorized to purchase mental health services from community mental health clinics or centers or to assist and cooperate with these clinics or centers by providing services, facilities, and professional assistance, wherever the assistance is rea-

sonable and furthers the general welfare of the state, county, region, or community.

History. Acts 1971, No. 433, ch. 2, § 5;
A.S.A. 1947, § 59-305.

cuit courts, Ark. Const. Amend. 80, §§ 6,
19.

Cross References. Jurisdiction of cir-

20-46-313. Distribution of funds.

The Arkansas State Hospital through the Department of Human Services is authorized to distribute such funds to community mental health clinics or centers as are appropriated by the General Assembly.

History. Acts 1971, No. 433, ch. 2, § 2;
A.S.A. 1947, § 59-302.

20-46-314. Federal grants.

The Arkansas State Hospital shall be designated as a proper agency to receive grants-in-aid from the federal government under the provisions of 42 U.S.C. § 246, and shall administer the grants in accordance therewith, in addition to grants-in-aid from the federal government to local or regional mental health clinics or centers.

History. Acts 1971, No. 433, ch. 2, § 4;
A.S.A. 1947, § 59-304.

20-46-315. Transfer of state's matching share.

The Division of Mental Health Services is authorized to retain and transfer to the Department of Human Services that portion of each community mental health center's or clinic's allotment which is required for the state's matching share for payment to community mental health centers or clinics for services eligible for federal reimbursement under the programs administered by the department.

History. Acts 1987, No. 1053, § 14.

SUBCHAPTER 4 — PSYCHIATRIC RESIDENTIAL TREATMENT FACILITIES

SECTION.

20-46-401 — 20-46-404. [Repealed.]

20-46-401 — 20-46-404. [Repealed.]

Publisher's Notes. This subchapter, concerning psychiatric residential treatment facilities, was repealed by Acts 1997, No. 1041, § 12. The subchapter was derived from the following sources:

20-46-401. Acts 1985, No. 609, § 1;
A.S.A. 1947, § 59-1203.

20-46-402. Acts 1985, No. 609, § 2;
A.S.A. 1947, § 59-1204.

20-46-403. Acts 1985, No. 609, § 3;
A.S.A. 1947, § 59-1205.

20-46-404. Acts 1985, No. 609, § 4;
A.S.A. 1947, § 59-1206.

For present law, see § 9-28-401 et seq.

SUBCHAPTER 5 — INTENSIVE RESIDENTIAL TREATMENT

SECTION.

20-46-501. Purpose.

20-46-502. Definitions.

20-46-503. Authority to establish program.

SECTION.

20-46-504. Rules and regulations.

20-46-505. Procedures.

20-46-501. Purpose.

The purpose of this subchapter is to enable the Division of Mental Health Services to provide intensive residential treatment for adults with long-term severe mental illness within specialized mental health residential settings.

History. Acts 1987, No. 648, § 1.

20-46-502. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Adults with long-term severe mental illness" means a person, eighteen (18) years of age or over, who meets criteria for service eligibility as defined by the Division of Mental Health Services. Individuals whose sole disability results from alcoholism, drug abuse, or mental retardation are excluded from this definition; and

(2)(A) "Intensive residential treatment program" means a nonhospital establishment with permanent facilities which provides a twenty-four-hour program of care by qualified therapists, including, but not limited to, licensed mental health professionals, psychiatrists, psychologists, psychotherapists, and licensed certified social workers for adults who have severe long-term mental illness but who are not in an acute phase of illness requiring the services of a psychiatric hospital, and who are in need of supervision or restorative treatment services.

(B) An establishment furnishing primarily domiciliary care is not within this definition.

History. Acts 1987, No. 648, § 2.

20-46-503. Authority to establish program.

The Division of Mental Health Services is authorized to establish and maintain in a specialized mental health setting a program to provide intensive residential treatment for adults with long-term severe mental illness.

History. Acts 1987, No. 648, § 3.

20-46-504. Rules and regulations.

(a) The Division of Mental Health Services shall adopt, promulgate, and enforce the rules, regulations, and standards that may be necessary for the accomplishment of this subchapter.

(b) The rules, regulations, and standards shall be modified, amended, or rescinded from time to time by the division as may be in the public interest.

History. Acts 1987, No. 648, § 4.

20-46-505. Procedures.

The Division of Mental Health Services shall follow the procedures prescribed for adjudication in the Arkansas Administrative Procedure Act, § 25-15-201 et seq., in exercising any power authorized by this subchapter.

History. Acts 1987, No. 648, § 5.

SUBCHAPTER 6 — MENTAL ILLNESS AND SUBSTANCE ABUSE

SECTION.

20-46-601. Tracking and treatment of persons suffering from

mental illness and substance abuse.

A.C.R.C. Notes. Acts 2001, No. 1476, § 1, provided: “(a) There is hereby created a legislative committee to be known as the ‘Social Anxiety Disorder Study Committee’.

“(b) The House and Senate cochair the House and Senate Interim Committees on Public Health, Welfare, and Labor shall jointly appoint five (5) committee members who shall be licensed counselors or licensed psychologists.

“(c) The House and Senate cochair the House and Senate Interim Committees on Public Health, Welfare, and Labor shall jointly call the first meeting of the committee, and at that meeting, the com-

mittee shall select from among its membership a chairperson and a vice chairperson.

“(d)(1) The committee shall conduct a study to determine what action might be taken by the General Assembly to assist persons with social anxiety disorder and report its finding to the Legislative Council no later than October 1, 2003.

“(2) The committee shall hear testimony from psychologists, licensed counselors, and other interested persons who can assist the committee in gathering and disseminating information.

“(e) The committee shall cease to exist on December 31, 2003.”

20-46-601. Tracking and treatment of persons suffering from mental illness and substance abuse.

(a) The General Assembly finds that:

(1) Persons who suffer from mental illness and abuse various chemical substances contribute disproportionately to the problem of violence in our society; and

(2) It is the purpose of this section to establish a utilization review and treatment program to reduce violence among persons who suffer from mental illness and who abuse chemical substances without a costly expansion of the Arkansas State Hospital.

(b) For purposes of this section, “client” means a person diagnosed to be addicted to drugs or alcohol who has been committed to the custody

of the Director of the Department of Human Services pursuant to § 5-2-314 as a result of acquittal, on the ground of mental disease or defect, of an offense involving bodily injury to another person, or serious risk of such injury.

(c) The Department of Human Services shall establish a system to:

(1) Provide case management of clients;

(2) Provide one (1) or more secure residential treatment facility or facilities designed to treat clients;

(3) Provide community crisis stabilization beds for clients;

(4) Provide client assessment and admission to treatment programs as necessary; and

(5) Review treatment utilization and track clients.

(d) The department is authorized to enter into contracts with any public or private nonprofit entity for the purpose of implementing this section.

History. Acts 1995, No. 1208, §§ 1-4.

CHAPTER 47

TREATMENT OF THE MENTALLY ILL

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. COMMITMENT AND TREATMENT.
3. RESIDENTIAL CARE FACILITIES.
4. COOPERATION AMONG INSTITUTIONS.
5. CHILD AND ADOLESCENT SERVICE SYSTEM PROGRAM.

RESEARCH REFERENCES

ALR. Physical measures undertaken in connection with treatment, 8 ALR4th 46.

Necessity and sufficiency of statements informing one under investigation for involuntary commitment of right to remain silent, 23 ALR4th 563.

Right to notice and hearing prior to revocation of conditional release status of mental patient, 29 ALR4th 394.

Parent's or relative's rights of visitation of adult child against his or her wishes, 40 ALR4th 846.

Nonconsensual treatment of involuntarily committed mentally ill person with neuroleptic or antipsychotic drugs as violation of state constitutional guaranty, 74 ALR 4th 1099.

Right of state prison authorities to ad-

minister neuroleptic or antipsychotic drugs to prisoner without his consent, 75 ALR4th 1124.

Harvesting organs, propriety of surgically invading incompetent or minor for benefit of third party, 4 ALR5th 1000.

Propriety of transferring patient found not guilty by reason of insanity to less restrictive confinement, 43 ALR5th 777.

Am. Jur. 53 Am. Jur. 2d, Mentally Impaired Persons, § 3 et seq.

Ark. L. Rev. Arkansas Involuntary Civil Commitment: In the Rear Guard of the Due Process Revolution, 32 Ark. L. Rev. 294.

C.J.S. 44 C.J.S. Insane Pers., § 57 et seq.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 20-47-101. Officers' duty to arrest insane and drunken persons.
 20-47-102. Officer's duty to make application to probate court.
 20-47-103. Mental health judicial inquiry.
 20-47-104. Detention prior to commitment to hospital.

SECTION.

- 20-47-105. Liability for costs of proceedings.
 20-47-106. Liability for support.
 20-47-107. Recovery of money paid by county.
 20-47-108. Care of insane paupers.
 20-47-109. Abuse of patients prohibited.

Effective Dates. Acts 1859, No. 52, § 3: effective on passage.

Acts 1971, No. 433, ch. 10, § 4: Mar. 29, 1971. Emergency clause provided: "It is hereby found and determined by the General Assembly that the various mental health laws have been enacted over a period of one hundred years and are not properly organized so that they can be easily found; that many of these laws are antiquated and archaic and are in great need of updating in order to be useful; that

the mental health laws need to be placed in a comprehensive code for easy reference by those persons interested in and who use these laws; and that only by the immediate passage of this Act can this be achieved. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall become effective from and after its passage and approval."

20-47-101. Officers' duty to arrest insane and drunken persons.

It shall be the duty of all peace officers to arrest any insane or drunken persons whom they may find at large and not in the care of some discreet person. The officer shall take him or her before some magistrate of the county, city, or town in which the arrest is made.

History. Crim. Code, § 383; C. & M. Dig., § 5827; Pope's Dig., § 7544; A.S.A. 1947, § 59-102.

Publisher's Notes. Crim. Code, § 383 is also codified as § 12-11-110(a).

CASE NOTES

At Large.

Insane person who was placed in a railroad waiting room was not "at large" even though the agent in charge left the

station, and this section had no application. *Saint Louis, I.M. & S.R.R. v. Woodruff*, 89 Ark. 9, 115 S.W. 953 (1909).

20-47-102. Officer's duty to make application to probate court.

Whenever any justice of the county court, sheriff, coroner, or constable shall discover any person to be of unsound mind as in Rev. Stat., ch. 78, § 1 [repealed] who resides in the county, it shall be his or her duty to make application to the probate court for the exercise of its jurisdiction, and thereupon the like proceedings shall be had as directed in § 20-47-103.

History. Rev. Stat., ch. 78, § 3; C. & M. Dig., § 5830; Pope's Dig., § 7547; A.S.A. 1947, § 59-104.

20-47-103. Mental health judicial inquiry.

If any person shall give information in writing to the probate court that any person in his or her county has a mental illness, as defined by the laws of this state, the probate court, if satisfied that there is good cause for the exercise of its jurisdiction, shall follow the procedure for involuntary admission and treatment of the person with the mental illness, as set out in the laws of this state.

History. Rev. Stat., ch. 78, §§ 2, 7; C. & M. Dig., §§ 5829, 5831; Pope's Dig., §§ 7546, 7548; A.S.A. 1947, §§ 59-101, 59-105; Acts 2001, No. 1478, § 1.

Amendments. The 2001 amendment inserted "or her" following "in his," substituted "has a mental illness, as defined by the laws of this state" for "is an idiot, lunatic, or of unsound mind and pray that

an inquiry thereof be had" and substituted "follow the procedure...laws of this state" for "cause the person so charged to be brought before the court and inquire into the facts by a jury, if the facts are doubtful"; and deleted (b).

Cross References. Jurisdiction of probate court, Ark. Const., Art. 7, § 34.

CASE NOTES

ANALYSIS

In general.

Applicability.

Chancery jurisdiction.

Convicted felon.

Jury.

Presence of person.

In General.

This section was not repealed by provisions relating only to procedure for appointment of guardian by probate court after one has been found mentally incompetent. *Scherz v. Peoples Nat'l Bank*, 214 Ark. 796, 218 S.W.2d 86 (1949).

Applicability.

This section is applicable in a proceeding for appointment of a guardian, but is not applicable in a proceeding for commitment to the State Hospital. *Payne v. Arkebauer*, 190 Ark. 614, 80 S.W.2d 76 (1935).

Chancery Jurisdiction.

Order of the probate court declaring a person to be of unsound mind which failed to recite that she was present at the hearing, or that she had notice of the proceeding, was void, and person declared insane was entitled to sue in chancery to have the order declared void, since there

was nothing in the probate court to appeal from or to correct. *Hyde v. McNeely*, 193 Ark. 1139, 104 S.W.2d 1068 (1937).

Convicted Felon.

The probate court has no jurisdiction of a proceeding to determine the issue of a convicted felon's sanity where he is in custody of officers of the law for execution. *Ferguson v. Martineau*, 115 Ark. 317, 171 S.W. 472 (1914).

Jury.

Probate court has authority to determine whether a person is mentally incompetent without a jury, where information is filed, and person charged as a mental incompetent is before the court. *Scherz v. Peoples Nat'l Bank*, 214 Ark. 796, 218 S.W.2d 86 (1949).

Presence of Person.

Provision that subject of inquiry in guardianship proceeding be brought before the court is mandatory and an order which fails to recite that jurisdictional fact is void. *Sharum v. Meriwether*, 156 Ark. 331, 246 S.W. 501 (1923); *Monks v. Duffle*, 163 Ark. 118, 259 S.W. 735 (1924); *Hyde v. McNeely*, 193 Ark. 1139, 104 S.W.2d 1068 (1937); *Sanders v. Omohundro*, 204 Ark. 1040, 166 S.W.2d 657 (1942).

An order of the probate court adjudicating a person insane and committing her to the State Hospital, and not for appointment of guardian, was not void on its face or violative of due process because made in her absence and without notice to her since she could appeal from the order and have a hearing. *Payne v. Arkebauer*, 190 Ark. 614, 80 S.W.2d 76 (1935).

Trial court is clothed with some discretion in determining whether presence of alleged incompetent is necessary and if trial court exercises its discretion and bars alleged incompetent from court room during part of the hearing, any abuse of

that discretion is merely an error in exercise of jurisdiction, corrected only by appeal, and is not ground for granting writ of injunction from further proceeding on petition by alleged incompetent. *Wilson v. Williams*, 215 Ark. 576, 221 S.W.2d 773 (1949).

Where person adjudged insane was not present at the time when the court adjudged him insane and ordered him committed, court was without jurisdiction and the order of the court will be reversed. *Rose v. Rose*, 229 Ark. 899, 318 S.W.2d 818 (1958) (but see § 20-47-209).

20-47-104. Detention prior to commitment to hospital.

The probate court with venue and jurisdiction of a person whose involuntary admission is sought shall make such orders as may be necessary to keep that person in restraint until the person can be sent by due process of law to the Arkansas State Hospital.

History. Crim. Code, § 386; C. & M. Dig., § 5828; Pope's Dig., § 7545; A.S.A. 1947, § 59-103; Acts 2001, No. 1478, § 2.

Amendments. The 2001 amendment deleted (b) and in the former (a), substituted "probate court with venue and jurisdiction of a person whose involuntary ad-

mission is sought" for "magistrate before whom an insane person is brought," and made gender neutral changes.

Cross References. Confinement of insane person when arrest made during night, § 12-11-110.

20-47-105. Liability for costs of proceedings.

(a) When any person shall be found to be in need of involuntary admission to the state's mental health system, the costs of proceedings shall be paid out of his or her estate or, if that is insufficient, by the county.

(b) If the person alleged to be in need of involuntary admission to the state's mental health system is discharged without admission, the costs shall be paid by the person at whose instance the proceeding was had unless the person is an officer acting officially under the provisions of this section, in which case the costs shall be paid by the county.

History. Rev. Stat., ch. 78, §§ 5, 6; C. & M. Dig., §§ 5832, 5833; Pope's Dig., §§ 7549, 7550; A.S.A. 1947, §§ 59-108, 59-109; Acts 2001, No. 1478, § 3.

Amendments. The 2001 amendment, in (a), substituted "in need of involuntary admission to the state's mental health

system" for "insane" and inserted "or her" following "of his"; and in (b), substituted "in need of involuntary admission to the state's mental health system is discharged without admission" for "insane shall be discharged," and substituted "section" for "act."

20-47-106. Liability for support.

Persons legally liable for the support, care, or maintenance of a person in need of state mental health services shall be liable for the costs of such mental health services to the extent that:

- (1) The person in need of services lacks the ability to pay; and
- (2) The legally liable person is able to pay.

History. Rev. Stat., ch. 78, § 48; C. & M. Dig., § 5881; Pope’s Dig., § 7603; A.S.A. 1947, § 59-115; Acts 2001, No. 1478, § 4.

Amendments. The 2001 amendment rewrote the section.

CASE NOTES

ANALYSIS

Burden of proof.
Disabled adult.
Hardship.
Secondary liability.
Statute of limitations.

Burden of Proof.

Secondary obligor using affirmative defense of inability to pay in action seeking to enforce the obligation has burden of showing, and is entitled to submit proof as to, that inability. *Alcorn v. Arkansas State Hosp.*, 236 Ark. 665, 367 S.W.2d 737 (1963).

Disabled Adult.

Once a child reaches majority and is physically and mentally normal, the legal duty of the parents to support that child ceases; that duty cannot be reimposed later if the adult child becomes disabled and needs support. *Towery v. Towery*, 285 Ark. 113, 685 S.W.2d 155 (1985).

Hardship.

The legislature never contemplated that one should be charged with the support of an incompetent to such an amount

as to leave other members of his family in a destitute condition. *Alcorn v. Arkansas State Hosp.*, 236 Ark. 665, 367 S.W.2d 737 (1963).

Secondary Liability.

The legislature intended that those persons who may be secondarily liable for the support of an incompetent be so notified and that, upon notification to them that the State Hospital Board has made such determination, the secondary liability commence as to indebtedness incurred after receipt of the notice. *Alcorn v. Arkansas State Hosp.*, 236 Ark. 665, 367 S.W.2d 737 (1963).

Statute of Limitations.

Since an action brought under this section has no specifically applicable statute of limitations, and since this section deals with a matter concerning the public interest, the three-year general statute of limitations does not operate on this section. *Alcorn v. Arkansas State Hosp.*, 236 Ark. 665, 367 S.W.2d 737 (1963).

Cited: *Missouri Pac. Transp. Co. v. Parker*, 200 Ark. 620, 140 S.W.2d 997 (1940).

20-47-107. Recovery of money paid by county.

In all cases of appropriations out of the county treasury for the support and maintenance or confinement of any person who is in need of mental health services, the amount thereof may be recovered by the county from any parent, guardian, or custodian who by law is bound to provide for the support and maintenance of the person who is in need of mental health services if there is any parent, guardian, or custodian able to pay the amount.

History. Rev. Stat., ch. 78, § 47; C. & M. Dig., § 5880; Pope's Dig., § 7602; A.S.A. 1947, § 59-114; Acts 2001, No. 1478, § 5.

Amendments. The 2001 amendment

deleted "insane" preceding "person," in two places, inserted "who is in need of mental health services" in two places and substituted "parent, guardian, or custodian" for "person" in two places.

20-47-108. Care of insane paupers.

In each county in this state where there is a poorhouse erected, all insane paupers shall be taken care of in like manner as other paupers, all laws and parts of laws to the contrary notwithstanding. County courts may make such additional compensation for taking care of insane paupers as may be deemed just.

History. Acts 1859, No. 52, § 1; C. & M. Dig., § 5879; Pope's Dig., § 7601; A.S.A. 1947, § 59-113.

20-47-109. Abuse of patients prohibited.

(a) Employees, agents, servants, or officers of the Arkansas State Hospital are prohibited from striking, beating, abusing, intimidating, assaulting, or in any manner physically chastising any patient in the Arkansas State Hospital.

(b)(1) It shall be the duty of all employees, agents, servants, or officers of the Arkansas State Hospital, upon learning of a violation of subsection (a) of this section, to immediately notify, in writing, the Director of the Arkansas State Hospital.

(2) Upon receiving a written report of a violation of this section, the director shall immediately investigate the incident and submit a report of the result of his or her findings to the Department of Human Services State Institutional System Board at the next regular meeting thereof.

(3) If the board finds the report to be true and finds that a violation of this section has occurred, the person so violating this section shall be forthwith dismissed from employment at the Arkansas State Hospital and shall be forever ineligible for further employment by the institution.

(4) If the board should determine after reading the report that a violation of the state's criminal laws has occurred, it shall immediately submit the report to the prosecuting attorney.

History. Acts 1971, No. 433, ch. 7, § 1; A.S.A. 1947, § 59-601.

Publisher's Notes. Acts 1971, No. 433, § 1 provided: "It is hereby found and determined by the General Assembly that the laws relating to the State Hospital, mental health, and mentally ill persons have been enacted piecemeal over a period of many years and that a great number of these laws are duplicating, conflicting, outmoded, and in urgent need of clarification and codification. It is the purpose and

intent of the General Assembly in enacting this Act to clarify, update, and codify the various laws of the State relating to the State Hospital, mental health, and mentally ill persons."

Acts 1971, No. 433, ch. 10, § 1, provided: "It is the specific intent of the codification of the mental health laws contained in this Act to only effect those laws pertaining to mental health. Nothing in this Act shall be deemed to repeal or modify the provisions of Act 411 of 1955.

No other laws shall be affected in any manner, nor shall the inclusion of such laws within this code in any way repeal or affect those laws as they otherwise apply.”

SUBCHAPTER 2 — COMMITMENT AND TREATMENT

- SECTION.
- 20-47-201. Purpose — Policy.
 - 20-47-202. Definitions.
 - 20-47-203. Habeas corpus.
 - 20-47-204. Voluntary admissions.
 - 20-47-205. Jurisdiction of probate court.
 - 20-47-206. [Repealed.]
 - 20-47-207. Involuntary admission — Original petition.
 - 20-47-208. Role of prosecuting attorney.
 - 20-47-209. Initial hearing — Failure to appear — Exceptions from appearance requirement.
 - 20-47-210. Immediate confinement — Initial evaluation and treatment.
 - 20-47-211. Notification of rights.
 - 20-47-212. Appointment of counsel.
 - 20-47-213. Evaluation — When performed and by whom — Transportation to place of evaluation.
 - 20-47-214. Forty-five-day involuntary admission — Hearing.

- SECTION.
- 20-47-215. Additional periods of involuntary admission — Petitions — Hearing.
 - 20-47-216. Continuances.
 - 20-47-217. Appeals.
 - 20-47-218. Treatment.
 - 20-47-219. Return of persons absent from treatment — Noncompliance with treatment plan — Effect on order.
 - 20-47-220. Fundamental rights.
 - 20-47-221. Patient or client advocate.
 - 20-47-222. Transfer and admission of residents who become ill in another state.
 - 20-47-223. Admission not adjudication of incapacity.
 - 20-47-224. Conversion from involuntary to voluntary status.
 - 20-47-225. Liability for charges.
 - 20-47-226. Forms.
 - 20-47-227. Exclusion from liability.
 - 20-47-228. Assurance of compliance.

Publisher’s Notes. A former subchapter 2, concerning commitment and treatment, was repealed by Acts 1987, No. 243, § 28. That former subchapter was derived from the following sources:

- 20-47-201. Acts 1979, No. 817, § 1; A.S.A. 1947, § 59-1401n.
- 20-47-202. Acts 1979, No. 817, ch. 1, § 1; 1981, No. 593, § 1; 1983, No. 851, § 1; A.S.A. 1947, § 59-1401.
- 20-47-203. Acts 1979, No. 817, ch. 1, § 24; A.S.A. 1947, § 59-1424.
- 20-47-204. Acts 1979, No. 817, ch. 1, § 3; 1981, No. 593, § 3; 1983, No. 851, § 3; A.S.A. 1947, § 59-1403.
- 20-47-205. Acts 1979, No. 817, ch. 1, § 2; 1980 (1st Ex. Sess.), No. 43, § 1; 1981, No. 593, § 2; 1983, No. 851, § 2; A.S.A. 1947, § 59-1402.
- 20-47-206. Acts 1981, No. 593, § 16; A.S.A. 1947, § 59-1427.
- 20-47-207. Acts 1979, No. 817, ch. 1, § 4; A.S.A. 1947, § 59-1404.
- 20-47-208. Acts 1979, No. 817, ch. 1, § 13; 1981, No. 593, § 9; A.S.A. 1947, § 59-1413.

- 20-47-209. Acts 1979, No. 817, ch. 1, § 5; 1981, No. 593, § 4; A.S.A. 1947, § 59-1405.
- 20-47-210. Acts 1979, No. 817, ch. 1, § 6; 1981, No. 593, § 5; 1983, No. 851, § 4; A.S.A. 1947, § 59-1406.
- 20-47-211. Acts 1979, No. 817, ch. 1, § 8; 1983, No. 851, § 6; A.S.A. 1947, § 59-1408.
- 20-47-212. Acts 1979, No. 817, ch. 1, § 8; 1983, No. 851, § 6; A.S.A. 1947, § 59-1408.
- 20-47-213. Acts 1979, No. 817, ch. 1, §§ 6, 7; 1981, No. 593, §§ 5, 6; 1983, No. 851, §§ 4, 5; A.S.A. 1947, §§ 59-1406, 59-1407.
- 20-47-214. Acts 1979, No. 817, ch. 1, § 9; 1981, No. 593, § 7; 1983, No. 851, § 7; A.S.A. 1947, § 59-1409.
- 20-47-215. Acts 1979, No. 817, ch. 1, § 10; 1981, No. 593, § 8; 1983, No. 851, § 8; A.S.A. 1947, § 59-1410.
- 20-47-216. Acts 1979, No. 817, ch. 1, § 11; A.S.A. 1947, § 59-1411.
- 20-47-217. Acts 1979, No. 817, ch. 1, § 23; A.S.A. 1947, § 59-1423.

20-47-218. Acts 1981, No. 734, § 26; A.S.A. 1947, § 59-1428.

20-47-219. Acts 1979, No. 817, ch. 1, § 15; 1981, No. 593, § 11; 1983, No. 851, § 9; A.S.A. 1947, § 59-1418.

20-47-220. Acts 1979, No. 817, ch. 1, § 18; 1981, No. 593, § 13; A.S.A. 1947, § 59-1418.

20-47-221. Acts 1979, No. 817, ch. 1, § 16; 1981, No. 593, § 12; 1983, No. 851, § 10; A.S.A. 1947, § 59-1416.

20-47-222. Acts 1979, No. 817, ch. 1, § 17; A.S.A. 1947, § 59-1417.

20-47-223. Acts 1979, No. 817, ch. 1, § 19; 1981, No. 593, § 14; A.S.A. 1947, § 59-1419.

20-47-224. Acts 1979, No. 817, ch. 1, § 22; A.S.A. 1947, § 59-1422.

20-47-225. Acts 1979, No. 817, ch. 1, § 12; 1981, No. 593, § 15; A.S.A. 1947, § 59-1412.

20-47-226. Acts 1979, No. 817, ch. 1, § 21; A.S.A. 1947, § 59-1421.

20-47-227. Acts 1979, No. 817, ch. 1, § 20; A.S.A. 1947, § 59-1420.

20-47-228. Acts 1979, No. 817, ch. 1, § 14; 1981, No. 593, § 10; A.S.A. 1947, § 59-1414.

Subchapter 2 as enacted in 1987, concerning commitment and treatment, was repealed by Acts 1989, No. 861, § 28. That former subchapter was derived from the following sources:

20-47-201. Acts 1987, No. 243, § 27.

20-47-202. Acts 1987, No. 243, § 1.

20-47-203. Acts 1987, No. 243, § 24.

20-47-204. Acts 1987, No. 243, § 3; 1989, No. 378, § 1.

20-47-205. Acts 1987, No. 243, § 2.

20-47-206. Acts 1987, No. 243, § 25.

20-47-207. Acts 1987, No. 243, § 4.

20-47-208. Acts 1987, No. 243, § 13.

20-47-209. Acts 1987, No. 243, § 5.

20-47-210. Acts 1987, No. 243, § 6; 1989, No. 378, § 2.

20-47-211. Acts 1987, No. 243, § 8.

20-47-212. Acts 1987, No. 243, § 8.

20-47-213. Acts 1987, No. 243, §§ 6, 7.

20-47-214. Acts 1987, No. 243, § 9.

20-47-215. Acts 1987, No. 243, § 10.

20-47-216. Acts 1987, No. 243, § 11.

20-47-217. Acts 1987, No. 243, § 23.

20-47-218. Acts 1987, No. 243, § 15.

20-47-219. Acts 1987, No. 243, § 18; 1989, No. 378, § 3.

20-47-220. Acts 1987, No. 243, § 16.

20-47-221. Acts 1987, No. 243, § 17.

20-47-222. Acts 1987, No. 243, § 19.

20-47-223. Acts 1987, No. 243, § 22.

20-47-224. Acts 1987, No. 243, § 12.

20-47-225. Acts 1987, No. 243, § 21.

20-47-226. Acts 1987, No. 243, § 20.

20-47-227. Acts 1987, No. 243, § 14.

20-47-228. Acts 1987, No. 243, § 26.

Cross References. Civil commitment of defendant acquitted of crime on ground of mental disease or defect, § 5-2-314.

Fund to pay defense costs for indigents, § 14-20-102.

Effective Dates. Acts 1987, No. 243, § 29: July 1, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the present mental health laws pertaining to voluntary admission, involuntary commitment and other related issues are in need of revision. It is further found that for the effective administration of this Act that this Act should become effective on July 1, 1987. Therefore an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall become effective on July 1, 1987."

Acts 1989, No. 861, § 29: July 1, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the present mental health laws pertaining to voluntary admission, involuntary commitment and other related issues are in urgent need of revision; that this act is designed to clarify such laws and make other needed revisions; and that for the effective administration of this act, it should become effective on July 1, 1989. Therefore an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall become effective on July 1, 1989."

Acts 1989 (3rd Ex. Sess.), No. 28, § 7: Nov. 7, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that the caseload of the Second and Sixth Judicial Districts necessitates the appointment of additional circuit-chancery judges immediately; and that this Act so provides and should therefore be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full

force and effect from and after its passage and approval."

Acts 1989 (3rd Ex. Sess.), No. 72, § 6: Nov. 16, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the present mental health laws pertaining to involuntary admissions and other related issues are in urgent need of clarification and revision; that this Act is designed to clarify and revise such laws; and that for the effective administration of this Act, it should become effective upon its enactment. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 410, § 8: Mar. 9, 1993. Emergency clause provided: "It is hereby found and determined by the Seventy-Ninth General Assembly of the State of Arkansas that Section 17 of Act 1082 of 1991 anticipates the Greater Little Rock Community Mental Health Center will cease being a part of a state agency and will become a private non-profit center; that mental health patients in the Greater Little Rock area will receive more efficient and effective delivery of mental health services from a private non-profit center; and that several immediate changes in Arkansas law are necessary to clarify the status of the Greater Little Rock Commu-

nity Mental Health Center and to expedite the transfer of authority and the transition of patients, employees, and facilities to the non-profit status. Therefore, in order to expedite the delivery of more efficient and effective mental health services in the Central Arkansas area, an emergency is hereby declared to exist, and this act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1999, No. 1245, § 5: Apr. 8, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that the recent decision of the Arkansas Supreme Court in *Chatman v. State* (February 11, 1999) has created some confusion as to the authority of the Sixth Judicial District Probate Judges with regard to involuntary commitment hearings and that this act should take immediate effect to resolve this confusion. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

RESEARCH REFERENCES

ALR. Civil liability for physical measures undertaken in connection with treatment of mentally disordered patient. 8 ALR 4th 464.

Liability of doctor, psychiatrist, or psychologist for failure to take steps to prevent patient's suicide. 17 ALR 4th 1128.

Hospital's liability for suicide of patient or former patient, 19 ALR4th 7.

Necessity and sufficiency of statements informing one under investigation for involuntary commitment of right to remain silent, 23 ALR4th 563.

Right to notice and hearing prior to revocation of conditional release status of mental patient. 29 ALR 4th 394.

Hospital's liability for patient's self-inflicted injuries, 36 ALR4th 117.

Hospital's liability for patient's injury or

death resulting from escape or attempted escape, 37 ALR4th 200.

Parent's or relative's rights of visitation of adult child against his or her wishes, 40 ALR4th 846.

Nonconsensual treatment of involuntarily committed mentally ill persons with neuroleptic or antipsychotic drugs as violative of state constitutional guarantees, 74 ALR4th 1099.

Right of state prison authorities to administer neuroleptic or antipsychotic drugs to prisoner without his consent, 75 ALR4th 1124.

Harvesting organs, propriety of surgically invading incompetent or minor for benefit of third party, 4 ALR5th 1000.

Propriety of transferring patient found

not guilty by reason of insanity to less restrictive confinement, 43 ALR5th 777.

UALR L.J. Sallings, Survey of Arkansas Law, 3 UALR L.J. 277.

Dicker, Symposium on Developmental Disabilities and the Law — Guardianship:

Overcoming the Last Hurdle to Civil Rights for the Mentally Disabled, 4 UALR L.J. 485.

Survey, Civil Procedure, 12 UALR L.J. 603.

Survey—Probate, 10 UALR L.J. 599.

CASE NOTES

ANALYSIS

Constitutionality.

Applicability.

Commitment under prior law.

Constitutionality.

Former statute governing admissions to the State Hospital was not unconstitutional on its face. *Wessel v. Pryor*, 461 F. Supp. 1144 (E.D. Ark. 1978) (decision under prior law).

When an accused was sufficiently linked with conduct which sustained a finding of dangerousness, his commitment by a circuit court in connection with criminal charges was based on a rational distinction from the commitment procedures followed in civil cases; accordingly, the fact that a criminal defendant committed under § 5-2-314 was subjected to a more lenient commitment standard, was subject to disparity in custodial care and was held to a more stringent release standard than that applied to patients committed under former statute, did not constitute a denial of equal protection under U.S. Const., Amend. 14. *Schock v. Thomas*, 274

Ark. 493, 625 S.W.2d 521 (1981) (decision under prior law).

To the extent that this subchapter conflicts with the requirements of *Wessel v. Pryor*, 461 F. Supp. 1144 (E.D. Ark. 1978) concerning time frames within which petitions must be filed and hearings must be accorded, they are in violation of the due process guarantees of the federal constitution and thus void. *Cannon v. Garland County*, 948 F. Supp. 1368 (W.D. Ark. 1996).

Applicability.

The court correctly proceeded under §§ 5-2-314 and 5-2-315 instead of under this subchapter where defendant was suffering from borderline intellectual functioning. *Barnett v. State*, 328 Ark. 246, 942 S.W.2d 860 (1997).

Commitment Under Prior Law.

Where commitment proceedings were had before the effective date of the current law, court looked to the law existing at the time of commitment to determine whether commitment had been proper. *Barbee v. Kolb*, 207 Ark. 227, 179 S.W.2d 701 (1944) (decision under prior law).

20-47-201. Purpose — Policy.

(a) The purpose of this subchapter is to enable the Division of Mental Health Services to assist in:

(1) Establishing, maintaining, and coordinating a comprehensive and effective system of services for persons with mental illness, disease, or disorder who may be voluntarily or involuntarily admitted to mental health facilities and programs within the state;

(2) Reducing the occurrence, severity, and duration of mental disabilities; and

(3) Preventing persons with mental illness from harming themselves or others.

(b) It is the policy of this state to provide access for persons with severe mental illness appropriate adequate and humane care which, to the extent possible while meeting the purposes of rehabilitation and treatment, is:

- (1) Within each person's own geographic area of residence;
 - (2) Least restrictive of the person's freedom of movement and ability to function normally in society, while being appropriate to the individual's capacity and promoting the person's independence; and
 - (3) Directed toward assuring movement through all treatment components to assure continuity of care.
- (c) It is the policy of this state to maintain involuntary admission laws to ensure that mental illness, disease, or disorder in and of itself is insufficient to involuntarily admit any person into the mental health services system.

History. Acts 1989, No. 861, § 27.

CASE NOTES

Jurisdiction.

Although a probate court may in some instances, after appropriate hearings, involuntarily commit for an extended period a mentally ill person who is dangerous to

himself or herself or others, the jurisdiction of a circuit court with respect to criminal defendants thought to be mentally ill is limited. *Henley v. Taylor*, 324 Ark. 114, 918 S.W.2d 713 (1996).

20-47-202. Definitions.

(1) "Administrator" refers to the chief administrative officer or executive director of any private or public facility or of any community mental health center certified by the Division of Mental Health Services;

(2) "Community mental health center" refers to a program and its affiliates established and administered by the state, or a private, nonprofit corporation certified by the division for the purpose of providing mental health services to the residents of a defined geographic area and which minimally provides twenty-four-hour emergency, inpatient, outpatient, consultation, education, prevention, partial care, follow-up and aftercare, and initial screening and precare services. The division may contract with a community mental health center for the operation and administration of any services which are part of the state mental health system;

(3) "Crisis response services" refers to immediate or emergency treatment. Because mental illnesses are often of an episodic nature, there will be instances that require acute and quick crisis response services;

(4) "Deputy director" refers to the chief executive officer for the Division of Mental Health Services;

(5) "Detention" refers to any confinement of a person against his or her wishes and begins either:

(A) When a person is involuntarily brought to a receiving facility or program or to a hospital;

(B) When, pursuant to § 20-47-209(a), the person appears for the initial hearing; or

(C) When a person on a voluntary status in a receiving facility or program or a hospital requests to leave pursuant to § 20-47-204(3);

(6) "Division" refers to the Division of Mental Health Services of the Department of Human Services;

(7) "Hospital" refers to the University of Arkansas for Medical Sciences Hospital, the federal Department of Veterans Affairs Hospitals, or any private hospital with a fully trained psychiatrist on the active or consultant staff;

(8) "Initial screening" refers to initial screening services conducted by a mental health professional provided by a receiving facility or program for individuals residing in the area served by the receiving facility or program who are being considered for referral to inpatient programs of the state mental health system to determine whether or not the individual meets the criteria for voluntary or involuntary admission and to determine whether or not appropriate alternatives to institutionalization are available. Such screening services shall be available to community organizations, agencies, or private practitioners who are involved in making referrals to the state mental health system;

(9) "Least restrictive appropriate setting" for treatment refers to the available treatment setting which provides the person with the highest likelihood of improvement or cure and which is not more restrictive of the person's physical or social liberties than is necessary for the most effective treatment of the person and for adequate protection against any dangers which the person poses to himself or herself or others;

(10)(A) "Mental illness" refers to a substantial impairment of emotional processes, or of the ability to exercise conscious control of one's actions, or the ability to perceive reality or to reason, when the impairment is manifested by instances of extremely abnormal behavior or extremely faulty perceptions.

(B) It does not include impairment solely caused by:

- (i) Epilepsy;
- (ii) Mental retardation;
- (iii) Continuous or noncontinuous periods of intoxication caused by substances such as alcohol or drugs; or
- (iv) Dependence upon or addiction to any substance such as alcohol or drugs;

(11) "Physician" refers to a medical doctor licensed to practice in Arkansas;

(12) "Psychosurgery" refers to those operations currently referred to as lobotomy, psychiatric surgery, and behavioral surgery and all other forms of brain surgery if the surgery is performed for the purpose of the following:

(A) Modification or control of thoughts, feelings, actions, or behavior rather than the treatment of a known and diagnosed physical disease of the brain;

(B) Modification of normal brain function or normal brain tissue in order to control thoughts, feelings, actions, or behavior; or

(C) Treatment of abnormal brain function or abnormal brain tissue in order to modify thoughts, feelings, actions, or behavior when the

abnormality is not an established cause of those thoughts, feelings, actions, or behavior;

(13) "Receiving facility or program" refers to an inpatient or outpatient treatment facility or program which is designated within each geographic area of the state by the Deputy Director for the Division of Mental Health Services to accept the responsibility for care, custody, and treatment of persons involuntarily admitted to the state mental health system.

(14) "State mental health system" refers to the Arkansas State Hospital, the George W. Jackson Community Mental Health Center in Jonesboro, Arkansas, and any other facility or program licensed or certified by the Division of Mental Health Services;

(15) "Treatment" refers to those psychological, educational, social, chemical, medical, somatic, or other techniques designed to bring about rehabilitation of persons with mental illness. Treatment may be provided in inpatient and outpatient settings; and

(16) "Treatment plan" refers to an individualized written document developed by the treatment staff of the hospital or receiving facility or program which includes the following:

(A) A substantiated diagnosis in the terminology of the American Psychiatric Association's Diagnostic and Statistical Manual;

(B) Short-term and long-term treatment goals;

(C) Treatment programs, facilities, and activities to be utilized to achieve the treatment goals; and

(D) Methods for periodic review and revision of the treatment plan.

History. Acts 1989, No. 861, § 1; 1993, No. 410, § 1.

RESEARCH REFERENCES

UALR L.J. Legislative Survey, Miscellaneous, 4 UALR L.J. 605.

Legislation of the 1983 General Assembly, Education, 6 UALR L.J. 622.

20-47-203. Habeas corpus.

Nothing in this subchapter shall in any way restrict the right of any person to attempt to secure his or her freedom by a habeas corpus proceeding as provided by current Arkansas law.

History. Acts 1989, No. 861, § 24.

CASE NOTES

Invalid Warrant.

Person committed to State Hospital by county and probate judge without notice, hearing or examination was entitled to release on habeas corpus in that the war-

rant or order delivered to the sheriff was not authorized by law. *Rowland v. Rogers*, 199 Ark. 1041, 137 S.W.2d 246 (1940) (decision under prior law).

20-47-204. Voluntary admissions.

The following shall apply to voluntary admissions of persons with a mental illness, disease, or disorder:

(1)(A) Any person who believes himself or herself to have a mental illness, disease, or disorder may apply to the administrator or his or her designee of a hospital or to the administrator or his or her designee of a receiving facility or program to which admission is requested.

(B) If the administrator or his or her designee of the hospital or the administrator or his or her designee of a receiving facility or program shall be satisfied after examination of the applicant that he or she is in need of mental health treatment and will be benefitted thereby, he or she may receive and care for the applicant in the hospital or receiving facility or program for such a period of time as he or she shall deem necessary for the recovery and improvement of the person, provided that the person agrees at all times to remain in the hospital or receiving facility or program;

(2) If at any time the person who has voluntarily admitted himself or herself to the hospital or receiving facility or program makes a request to leave, and the administrator or his or her designee determines that the person meets the criteria for involuntary admission as defined in § 20-47-207, then the person shall be considered to be held by detention and the involuntary admission procedures set forth herein shall apply;

(3)(A) Any person requesting to leave under subdivision (2) of this section shall, within one (1) hour of his or her request to any hospital or receiving facility or program employee, in an administrative or treatment capacity, be provided with a written statement advising him or her of all rights delineated in §§ 20-47-211 and 20-47-212. The person shall further be provided with an acknowledgment confirming that he or she has been advised of the aforesaid rights.

(B)(i) If the person refused to sign the acknowledgment, this refusal shall be noted in the person's chart and shall be attested to by two (2) eyewitnesses on a separate document.

(ii) An original of said attestation shall be furnished to the court.

(C) For the purposes of computing the initial period of evaluation and treatment referred to in § 20-47-213, detention begins upon the signing of the acknowledgment by the person or, in the event that the person refuses to sign the acknowledgment, upon the attestation of said refusal by two (2) eyewitnesses; and

(4)(A) A person voluntarily admitted who absents himself or herself from a hospital or receiving facility or program, as defined in this subchapter, may be placed on elopement status and a pick-up order issued if, in the opinion of the treatment staff, the person meets the criteria for involuntary admission as defined in § 20-47-207.

(B) It shall be the responsibility of the sheriff of the county or a law enforcement officer of the city of the first class in which the individual is physically present to transport the individual.

(C) Upon return to the hospital or receiving facility or program, this individual shall be held under detention as defined in § 20-47-202(5).

History. Acts 1989, No. 861, § 3.

CASE NOTES

ANALYSIS

Change of status.
Refusal to admit.
Written consent.

Change of Status.

If an individual inpatient whose status changes from voluntary to involuntary, as evidenced by such person's expressed desire to leave the hospital or facility, or to refuse further care and treatment, or by a revocation of such person's previously given consent, or by any other conduct clearly indicating such is being detained against his or her will, then the detaining hospital or facility must initiate or cause to be initiated civil commitment proceedings at the first available opportunity and further detention may be only by order of the court pursuant to the commitment proceeding, or such person shall be released or discharged by the detaining hospital or facility. *Wessel v. Pryor*, 461 F.

Supp. 1144 (E.D. Ark. 1978) (decision under prior law).

Refusal to Admit.

Refusal of State Hospital to admit a minor negro incompetent on grounds of lack of facilities was not set aside by the court. *Johnson v. Crawfis*, 128 F. Supp. 230 (E.D. Ark. 1955) (decision under prior law).

Written Consent.

Any voluntary inpatient who is being detained by or confined in the State Hospital, a community mental health facility, or other hospital must have that voluntary status evidenced by his or her signature on a record or form provided and maintained by the detaining hospital or facility and indicating the person's informed consent to diagnosis, care and treatment. *Wessel v. Pryor*, 461 F. Supp. 1144 (E.D. Ark. 1978) (decision under prior law).

20-47-205. Jurisdiction of probate court.

(a) The circuit courts of this state shall have exclusive jurisdiction of the involuntary admission procedures initiated pursuant to this subchapter, except that the juvenile division as may hereafter be vested with jurisdiction shall have concurrent jurisdiction to involuntarily commit persons under eighteen (18) years of age to the extent provided by this section.

(b)(1) Within seven (7) days of the person's detention, excluding weekends and holidays, the probate court shall conduct the hearing as defined in § 20-47-214.

(2) Except as otherwise provided in subsection (d) of this section, the hearing, as defined by § 20-47-214 and § 20-47-215, shall be conducted by the same court, or by a judge designated on exchange, who heard the original petition and issued the appropriate order.

(3) The court shall ensure that the person sought to be involuntarily admitted is afforded all his or her rights as prescribed by this subchapter.

(4) The probate judge, when conducting any hearing set out in this subchapter, may conduct the hearing within any county of the judge's judicial district.

(c) The hearings conducted pursuant to §§ 20-47-209, 20-47-214, and 20-47-215 may be held at inpatient programs of the state mental health system or a receiving facility or program where the person is detained.

(d) A probate judge of the Sixth Judicial District sitting within the Sixth Judicial District may conduct involuntary commitment hearings prescribed by §§ 20-47-214 and 20-47-215 and initiated in other judicial districts of this state pursuant to §§ 20-47-207 and 20-47-209 provided that the person sought to be committed is detained within the boundaries of the Sixth Judicial District at the time of the hearing held pursuant to §§ 20-47-214 or 20-47-215. The Sixth Judicial District shall thus assume the mantle of other judicial districts and shall have the authority to enter treatment orders for other judicial districts in the hearings prescribed by §§ 20-47-214 and 20-47-215. In those cases, no initial petition pursuant to § 20-47-207 shall be filed in the Sixth Judicial District but only in the court of original jurisdiction. Provided, however, if the person was transported to a location within the Sixth Judicial District by order of a court outside the Sixth Judicial District, the court of original jurisdiction may conduct the hearings prescribed by §§ 20-47-214 and 20-47-215.

History. Acts 1989, No. 861, § 2; 1989 (3rd Ex. Sess.), No. 28, § 4; 1997, No. 1224, § 1; 1999, No. 1245, § 1.

A.C.R.C. Notes. As originally enacted, subsection (a) provided: "The probate courts of this state shall have exclusive jurisdiction of the involuntary admission procedures initiated pursuant to this subchapter, except that the juvenile division of the chancery court or other courts as may hereafter be vested with jurisdiction shall have concurrent jurisdiction to involuntarily commit persons under eighteen (18) years of age to the extent provided by this section." Amendment 80 to the Arkansas Constitution was adopted by voter referendum and became effective July 1, 2001. Amendment 80 established circuit

courts as the trial courts of original jurisdiction of all justiciable matters not otherwise assigned pursuant to the Constitution and specifically provided that "jurisdiction conferred on Circuit Courts established by this Amendment includes all matters previously cognizable by Circuit, Chancery, Probate and Juvenile Courts..."

Amendments. The 1997 amendment rewrote this section.

The 1999 amendment, in (b)(1), inserted "in subsection (d) of this section" and "and § 20-47-215"; inserted (b)(3); in (c), inserted "and § 20-47-215" and made related changes; deleted former (d); redesignated former (e) as present (d); rewrote present (d); and made stylistic changes.

CASE NOTES

ANALYSIS

Due process generally.
Hearing.

Due Process Generally.

Although due process safeguards do not extend to the voluntary committee they most definitely extend to involuntary detainees. *Von Luce v. Rankin*, 267 Ark. 34, 588 S.W.2d 445 (1979) (decision under prior law).

Not even a mentally ill person may be confined against his will unless he is afforded due process of law. *Von Luce v. Rankin*, 267 Ark. 34, 588 S.W.2d 445 (1979) (decision under prior law).

Hearing.

A guardian may not voluntarily confine her ward as a patient in the State Hospital without the ward's consent or a probate court hearing. *Von Luce v. Rankin*,

267 Ark. 34, 588 S.W.2d 445 (1979) (decision under prior law).

Where voluntary commitment converted to an involuntary commitment, patient could not be further held without a hearing. *Von Luce v. Rankin*, 267 Ark. 34, 588 S.W.2d 445 (1979) (decision under prior law).

Former subsection (e) of this section

authorizes Pulaski County probate judges to conduct the 45-day hearings as Pulaski County probate judges, but a petition must be filed before that court to give it jurisdiction. *Chatman v. State*, 336 Ark. 323, 985 S.W.2d 718 (1999) (decision under prior law).

Cited: *Chatman v. State*, 336 Ark. 323, 985 S.W.2d 718 (1999).

20-47-206. [Repealed.]

Publisher's Notes. This section, concerning appointment, qualifications, and duties of magistrates, was repealed by

Acts 1997, No. 1224, § 4. The section was derived from Acts 1989, No. 861, § 25.

20-47-207. Involuntary admission — Original petition.

(a) **WRITTEN PETITION — VENUE.** Any person having reason to believe that a person meets the criteria for involuntary admission as defined in subsection (c) of this section may file a verified petition with the clerk of the probate court of the county in which the person alleged to have mental illness resides or is initially detained.

(b) **CONTENTS OF PETITION.** The petition for involuntary admission shall:

(1) State whether the person is believed to be of danger to himself or herself or others as defined in subsection (c) of this section;

(2) Describe the conduct, clinical signs, and symptoms upon which the petition is based. The description shall be limited to facts within the petitioner's personal knowledge;

(3) Contain the names and addresses of any witnesses having knowledge relevant to the allegations contained in the petition; and

(4) Contain a specific prayer for involuntary admission of the person to a hospital or to a receiving facility or program for treatment pursuant to § 20-47-218(c).

(c) **INVOLUNTARY ADMISSION CRITERIA.** A person shall be eligible for involuntary admission if he or she is in such a mental condition as a result of mental illness, disease, or disorder that he or she poses a clear and present danger to himself or herself or others:

(1) As used in this subsection, "a clear and present danger to himself or herself" is established by demonstrating that:

(A) The person has inflicted serious bodily injury on himself or herself has attempted suicide or serious self-injury and there is a reasonable probability that the conduct will be repeated if admission is not ordered;

(B) The person has threatened to inflict serious bodily injury on himself or herself and there is a reasonable probability that the conduct will occur if admission is not ordered; or

(C) The person's behavior demonstrates that he or she so lacks the capacity to care for his or her own welfare that there is a reasonable

probability of death, serious bodily injury, or serious physical or mental debilitation if admission is not ordered; and

(2) As used in this subsection, "a clear and present danger to others" is established by demonstrating that the person has inflicted, attempted to inflict, or threatened to inflict serious bodily harm on another, and there is a reasonable probability that the conduct will occur if admission is not ordered.

History. Acts 1989, No. 861, §§ 1, 4.

CASE NOTES

ANALYSIS

Additional period.

Contents.

Double jeopardy.

Evidence.

Filing.

Grounds.

Release.

Additional Period.

The criteria for involuntary admission prescribed in subsection (c) apply to hearings wherein an additional period of involuntary admission is sought. *Black v. State*, 52 Ark. App. 140, 915 S.W.2d 300 (1996).

Contents.

Any reputable citizen of the state may file a written petition under oath, with the clerk of the probate court of the county in which an alleged mentally ill person resides or is found, which petition for commitment shall state that the respondent is mentally ill and that at least one of the standards for involuntary civil commitment is applicable to respondent and describe respondent's conduct, setting out all details of which the petitioner is aware, including the time and place of any pertinent occurrence(s) and the names and addresses of any witnesses, if known. *Wessel v. Pryor*, 461 F. Supp. 1144 (E.D. Ark. 1978) (decision under prior law).

Double Jeopardy.

A civil commitment for evaluation and treatment does not meet the test of prior punishment for a criminal offense, even when the precipitating event for the commitment is criminal. *Edwards v. State*, 328 Ark. 394, 943 S.W.2d 600 (1997), cert. denied, 522 U.S. 950, 118 S. Ct. 370, 139 L. Ed. 2d 288 (1997).

Evidence.

The state failed to prove by clear and convincing evidence that defendant posed a clear and present danger to herself or others. *Campbell v. State*, 51 Ark. App. 147, 912 S.W.2d 446 (1995).

Filing.

If an alleged mentally ill person is detained by or admitted to the local community mental health facility or its designee, or by the State Hospital, or if he is detained in any way in custody by local law enforcement authorities because of his alleged mental illness, a petition for commitment by the detaining or admitting facility, the officer, or by an interested citizen, must be filed at the first available opportunity in the probate court in the county where the person resides or is found. *Wessel v. Pryor*, 461 F. Supp. 1144 (E.D. Ark. 1978) (decision under prior law).

Grounds.

For a discussion of grounds for involuntary civil commitment, see *Wessel v. Pryor*, 461 F. Supp. 1144 (E.D. Ark. 1978) (decision under prior law).

A determination that an individual presents a clear and present danger to himself or others, as is required for civil commitment under this section, is not necessarily the same as a determination that an individual lacks the capacity to form culpable intent, as is required to acquit an individual under § 5-2-312. *Edwards v. State*, 328 Ark. 394, 943 S.W.2d 600 (1997), cert. denied, 522 U.S. 950, 118 S. Ct. 370, 139 L. Ed. 2d 288 (1997).

Release.

The respondent may be released at any stage of the proceeding if none of the

standards for involuntary civil commitment still apply to him. *Wessel v. Pryor*, 461 F. Supp. 1144 (E.D. Ark. 1978) (decision under prior law).

A noncapital defendant's absolute right to bail may only be curbed by the setting of certain conditions upon his release, and not its complete denial; thus, although mental examination provided a basis for

setting stringent conditions on release of defendant charged with attempted murder and aggravated assault, it did not give the judge the option of refusing to release him from incarceration. *Henley v. Taylor*, 324 Ark. 114, 918 S.W.2d 713 (1996).

Cited: In re Allen, 304 Ark. 222, 800 S.W.2d 715 (1990).

20-47-208. Role of prosecuting attorney.

(a)(1) It shall be the duty of the prosecuting attorney's office in the county where the petition is filed to represent the petitioner, regardless of the petitioner's financial status, at all hearings held in the probate court pursuant to this subchapter except those hearings held before the probate judge at the Arkansas State Hospital in Pulaski County, Arkansas.

(2) The Office of the Prosecutor Coordinator shall appear for and on behalf of the petitioner and the State of Arkansas before the probate judge at the Arkansas State Hospital. The prosecuting attorneys of applicable counties may contract with other attorneys to provide these services.

(b) Such representation shall be a part of the official duties of the prosecuting attorney or of the Prosecutor Coordinator, and the prosecuting attorney and the Prosecutor Coordinator shall be immune from civil liability in the performance of this official duty.

(c) Nothing in this section shall prevent the petitioner from retaining his or her own counsel in these proceedings, in which case the prosecuting attorney or the Prosecutor Coordinator shall be relieved of the duty to represent the petitioner.

History. Acts 1989, No. 861, § 13; 1989 (3rd Ex. Sess.), No. 72, § 3; 1997, No. 1224, § 2.

Amendments. The 1997 amendment, in (a)(1), substituted "held" for "pending" preceding "before the" and deleted "mag-

istrate, probate referee, or" thereafter; deleted "mental health magistrate, probate referee, or" preceding "probate judge" in the first sentence; and inserted "or her" in (c).

CASE NOTES

Cited: In re Allen, 304 Ark. 222, 800 S.W.2d 715 (1990).

20-47-209. Initial hearing — Failure to appear — Exceptions from appearance requirement.

(a) If the person named in the original petition is not confined at the time that the petition is filed, the court may:

(1) Enter an ex parte order directing a law enforcement officer to serve the person with a copy of the petition together with a notice to appear for an initial hearing. The hearing shall be set by the court

within three (3) days, excluding weekends and holidays, of the filing of the original petition. If the person is duly served and fails to appear, the court shall issue an order of detention; or

(2) Dismiss the petition.

(b) The person named in the original petition is not required to appear and may be removed from the presence of the court upon a finding by the court that the person is:

(1) By reason of physical infirmity unable to appear;

(2) That the person's appearance would be detrimental to his or her mental health, well-being, or treatment; or

(3) That his or her conduct before the court is so disruptive that the proceedings cannot reasonably continue with him or her present.

(c)(1) The petitioner shall appear before the probate judge hearing the petition to substantiate the petition.

(2) The court shall make a determination based on clear and convincing evidence that there is probable cause to believe that the person has a mental illness, disease, or disorder and that one (1) of the criteria for involuntary admission applies to the person.

(3) If such a determination is made, the person shall be admitted for evaluation, and a hearing pursuant to § 20-47-214 shall be held within the period specified in § 20-47-205.

History. Acts 1989, No. 861, § 5; 1989 (3rd Ex. Sess.), No. 72, § 1; 1997, No. 1224, § 3.

Amendments. The 1997 amendment deleted "referee or" preceding "probate judge" in (c)(1).

CASE NOTES

ANALYSIS

Detention pending hearing.

Failure to hold hearing.

Detention Pending Hearing.

In the event a probable cause hearing is not held upon the respondent's initial appearance, the court may order the respondent to be detained at the State Hospital or any public community mental health facility or in custody pending the probable cause hearing. *Wessel v. Pryor*, 461 F. Supp. 1144 (E.D. Ark. 1978) (decision under prior law).

Failure to Hold Hearing.

The failure to conduct a probable cause hearing is a fatal defect in the process and divests any successive court of jurisdiction to proceed further in the matter, thus requiring the reversal of any future order directing treatment. *Chatman v. State*, 336 Ark. 323, 985 S.W.2d 718 (1999).

Cited: *In re Allen*, 304 Ark. 222, 800 S.W.2d 715 (1990); *Cannon v. Garland County*, 948 F. Supp. 1368 (W.D. Ark. 1996).

20-47-210. Immediate confinement — Initial evaluation and treatment.

(a) Whenever it appears that a person is of danger to himself or herself or others, as defined in § 20-47-207, and immediate confinement appears necessary to avoid harm to the person or others:

(1) An interested citizen may take the person to a hospital or to a receiving facility or program. If no other safe means of transporting the individual is available, it shall be the responsibility of the law enforce-

ment agency that exercises jurisdiction at the site where the individual is physically located and requiring transportation, or unless otherwise ordered by the judge. A petition, as provided in § 20-47-207, shall be filed in the probate court of the county in which the person resides or is detained within seventy-two (72) hours, excluding weekends and holidays, and a hearing, as provided in § 20-47-209(a)(1) shall be held; or

(2) Any person filing a petition for involuntary admission may append to the petition a request for immediate confinement which shall state with particularity facts personally known to the affiant which establish reasonable cause to believe that the person sought to be involuntarily admitted is in imminent danger of death or serious bodily harm or that the lives of others are in imminent danger of death or serious bodily harm due to the mental state of the person sought to be involuntarily admitted.

(b)(1) When a petition for involuntary admission with a request for immediate confinement appended thereto is filed, the petitioner shall then appear before a probate judge of the county where the person sought to be immediately confined resides or is found.

(2) The probate judge shall then conduct an ex parte hearing for the purpose of determining whether there is reasonable cause to believe that the person meets the criteria for involuntary admission and, furthermore, that the person is in imminent danger of death or serious bodily harm or that others are in danger of death or serious bodily harm due to the mental condition of the person sought to be involuntarily admitted.

(3) If the probate judge determines that immediate confinement is necessary to prevent death or serious bodily harm to either the person sought to be involuntarily admitted or to others, the judge shall order the law enforcement agency that exercises jurisdiction at the site where the individual is physically present to transport the individual to an appropriate receiving facility. A hearing, as provided for in § 20-47-209(a)(1), shall be held within seventy-two (72) hours of the person's detention and confinement.

(c) If the person is transported to a hospital or to a receiving facility or program or to the office of a licensed physician of the State of Arkansas or of the federal government, either salaried or self-employed, for purposes of initial evaluation and treatment, then the hospital or receiving facility or program or physician may detain the person for initial evaluation and treatment provided:

(1) The person is immediately advised of his or her rights as provided in § 20-47-211; and

(2) The person is determined by the treatment staff of the hospital or receiving facility or program or by the physician to be of danger to himself or herself or others as defined in § 20-47-207; and

(3) A hearing pursuant to § 20-47-209(a)(1) is held within the specified time period.

(d) Nothing herein shall prevent the person so detained from being released sooner than the period specified in § 20-47-205 if in the

judgment of the treatment staff of the hospital or the receiving facility or of the treating physician the person does not require further mental health treatment. The court shall be immediately advised in writing of the release and shall dismiss the action.

History. Acts 1989, No. 861, § 6; 1989 (3rd Ex. Sess.), No. 72, § 2.

CASE NOTES

ANALYSIS

In general.
Due process.
Noncompliance.

In General.

Under former similar statute, whenever it appeared that a person was mentally ill, that at least one of the standards for involuntary civil commitment was applicable, and immediate confinement appeared to be necessary in order to avoid harm to that person or others, any law enforcement officer on his own initiative or at the request of any interested citizen was authorized to take the person forthwith to a regularly licensed and practicing physician in the county in which the person resided or was found, or to the nearest public community mental health facility in the applicable mental health catchment area, or the State Hospital. Wessel v. Pryor, 461 F. Supp. 1144 (E.D. Ark. 1978) (decision under prior law).

Due Process.

The plaintiff's due process rights were not violated where a petition for involuntary commitment was filed at the first available opportunity, within 24 hours of his detention exclusive of the weekend, and he was given a hearing and released at his initial appearance, which was held within 24 hours after the petition was filed. Cannon v. Garland County, 948 F. Supp. 1368 (W.D. Ark. 1996).

Noncompliance.

Since the legislature intended mandatory compliance with subdivision (a)(1), failure to file a petition within 72 hours, excluding weekends and holidays, requires dismissal of the petition. Campbell v. State, 311 Ark. 641, 846 S.W.2d 639 (1993).

Cited: Hattison v. State, 324 Ark. 317, 920 S.W.2d 849 (1996).

20-47-211. Notification of rights.

Along with the copy of the petition and the copy of the order directing appearance for an initial evaluation or an order of detention, the person sought to be involuntarily admitted shall be served with a copy of the following statement of rights:

- (1) That he or she has the right to effective assistance of counsel, including the right to a court-appointed attorney;
- (2) That he or she and his or her attorney have a right to be present at all significant stages of the proceedings and at all hearings except that no attorney shall be entitled to be present upon examination of the person by the physician or any member of the treatment staff pursuant to an evaluation, whether initially or subsequently;
- (3) That he or she has the right to present evidence in his or her own behalf;
- (4) That he or she has the right to cross-examine witnesses who testify against him or her;
- (5) That he or she has a right to remain silent; and

(6) That he or she has a right to view and copy all petitions, reports, and documents contained in the court file.

History. Acts 1989, No. 861, § 8.

CASE NOTES

Evidence.

The appellant was not afforded his due process protection pursuant to this section where: (1) although it was arguable that his probable cause hearing was held within 72 hours, excluding weekends, of his confinement, he was neither allowed to appear nor afforded legal counsel to appear on his behalf; (2) while the court may conduct the hearing in a detainee's absence due to physical infirmity, or if

appearance would be detrimental to his health, well-being, or treatment, or that his conduct would be disruptive, the court failed to make specific findings that one of these conditions was present to justify the appellant's nonattendance; and (3) the appellant was not afforded any legal counsel at what turned out to be the probable cause hearing in his case. *Buchte v. State*, 337 Ark. 591, 990 S.W.2d 539 (1999).

20-47-212. Appointment of counsel.

(a) If it appears to the court that the person sought to be involuntarily admitted is in need of counsel, counsel shall be appointed immediately upon filing of the original petition.

(b)(1) Whenever legal counsel is appointed by the court, the court shall determine the amount of the fee, if any, to be paid the attorney so appointed and issue an order for payment.

(2) The amount allowed shall not exceed one hundred fifty dollars (\$150) based upon the time and effort of the attorney in the investigation, preparation, and representation of the client at the court hearings.

(3) The court shall have the authority to appoint counsel on a pro bono basis.

(c) The quorum courts of each county shall appropriate funds for the purpose of payment of the attorney's fees provided for by this subchapter, and, upon presentment of a claim accompanied by an order of the probate court fixing the fee, the fee shall be approved by the county court and paid in the same manner as other claims against the county are paid.

History. Acts 1989, No. 861, § 8.

CASE NOTES

Duty of Court.

Once the respondent is brought before the court, the court shall: assure that the respondent has effective assistance of counsel, appointing counsel if the respondent is indigent; advise the respondent that he and his attorney shall have the right to be present at all significant stages

of the proceeding; give notice to the respondent of the procedures to be followed in the commitment proceeding; serve on the respondent and his counsel all papers relevant to the proceeding, including petition for commitment, pick-up order, physician's statement, if previously presented to the court, and any other relevant docu

ments. *Wessel v. Pryor*, 461 F. Supp. 1144 (E.D. Ark. 1978) (decision under prior law). **Cited:** *In re Allen*, 304 Ark. 222, 800 S.W.2d 715 (1990).

20-47-213. Evaluation — When performed and by whom — Transportation to place of evaluation.

(a) If the person is transported to a hospital or receiving facility or program or to the office of a licensed physician of the State of Arkansas or of the federal government, either salaried or self-employed, for purposes of initial evaluation and treatment, then the hospital or receiving facility or program or physician may detain the person for initial evaluation and treatment, provided:

(1) The person is immediately advised of his or her rights as provided in § 20-47-211;

(2) The person is determined by the treatment staff of the hospital or receiving facility or program or by the physician to be of danger to himself or herself or others as defined in § 20-47-207; and

(3) A hearing pursuant to § 20-47-209(a)(1) of this subchapter is held within the specified time period.

(b)(1) If a physician is not immediately available for the initial evaluation, the initial evaluation may be performed by an administrator's designee, working under medical supervision and direction. In such cases, a supervising physician shall be consulted by telephone before any decision is made concerning the initial evaluation and treatment.

(2) Every person admitted to a hospital or a receiving facility or program under this provision shall be seen and evaluated personally by a physician within twenty-four (24) hours of detention.

(c) In all cases, the evaluations required by the court for involuntary admission pursuant to § 20-47-214 shall be performed only by a physician licensed to practice in the State of Arkansas.

(d) If it is determined at the initial hearing that the person should be evaluated to determine the need for mental health services on an involuntary basis, a law enforcement officer or family of the person, as the court shall direct, shall transport the person to the place of evaluation.

(e) Nothing in this subchapter shall prevent the person so detained from being released sooner than the period specified in § 20-47-205 if, in the judgment of the treatment staff of the hospital or of the receiving facility or of the treating physician, the person does not require further mental health treatment. The court shall be immediately advised in writing of the release and shall dismiss the action.

History. Acts 1989, No. 861, §§ 6, 7.

CASE NOTES

Cited: In re Allen, 304 Ark. 222, 800 S.W.2d 715 (1990).

20-47-214. Forty-five-day involuntary admission — Hearing.

(a)(1) Within the period specified in § 20-47-205, a hearing shall be held.

(2) The hearing must be conducted in public, open to the news media.

(3) All testimony must be taken under oath and preserved.

(4) All witnesses shall be subject to a penalty for perjury, and each witness who shall testify shall be instructed by the hearing officer as to the penalty for perjury prior to testifying.

(b)(1) Should any person be found guilty of giving false testimony that results in a person's wrongful involuntary admission, he shall be liable for civil damages and subject to incarceration for not less than thirty (30) days.

(2) The court shall make a determination at that time whether clear and convincing evidence has been presented that the person sought to be involuntarily admitted is of danger to himself or herself or to others as defined in § 20-47-207.

(3) If this burden of proof has been met, the court shall issue an order authorizing the hospital or receiving facility or program to detain the person for treatment for a maximum of forty-five (45) days.

(c) This section shall be construed to allow the person sought to be involuntarily admitted to request treatment under the least restrictive alternative appropriate setting.

(d) If a hearing pursuant to this section is not held within the period specified in § 20-47-205, the person shall be released.

History. Acts 1989, No. 861, § 9.

CASE NOTES

ANALYSIS

Cross-examination.
Due process generally.
Hearing.
Rights of respondent.

Cross-Examination.

Affidavits containing reports of examinations by mental health professionals may be received in evidence, provided that if the respondent demonstrates a substantial purpose in cross-examination of any examiner and the purpose is related to the justification for commitment, the court shall order the examiner's presence or allow for cross-examination by deposition. Wessel v. Pryor, 461 F. Supp. 1144 (E.D. Ark. 1978) (decision under prior law).

Due Process Generally.

Not even a mentally ill person may be confined against his will unless he is afforded due process of law. Von Luce v. Rankin, 267 Ark. 34, 588 S.W.2d 445 (1979) (decision under prior law).

Although due process safeguards do not extend to the voluntary committee, they most definitely extend to involuntary detainees. Von Luce v. Rankin, 267 Ark. 34, 588 S.W.2d 445 (1979) (decision under prior law).

Hearing.

Where voluntary commitment was converted to an involuntary commitment, patient could not be further held without a hearing. Von Luce v. Rankin, 267 Ark. 34,

588 S.W.2d 445 (1979) (decision under prior law).

Rights of Respondent.

The respondent shall have the following rights at the probable cause hearing: to be present, unless the court determines that his conduct in the courtroom is so disruptive that the proceedings cannot reasonably continue with him present; to the effective representation of counsel; to

present evidence in his own behalf; to cross-examine witnesses who testify against him; to view any and all petitions and reports in the court file of his case; to subpoena witnesses. *Wessel v. Pryor*, 461 F. Supp. 1144 (E.D. Ark. 1978) (decision under prior law).

Cited: *Campbell v. State*, 51 Ark. App. 147, 912 S.W.2d 446 (1995).

20-47-215. Additional periods of involuntary admission — Petitions — Hearing.

(a) **GENERALLY.** (1) Additional one hundred eighty-day involuntary admission orders may be requested if, in the opinion of the treatment staff, a person involuntarily admitted continues to meet the criteria for involuntary admission.

(2) Additional one hundred eighty-day involuntary admission periods may be requested by the treatment staff of the hospital or receiving facility or program when it is its opinion that the person needs continued treatment and supervision without which the person poses a likelihood of danger to himself or herself or to others as defined in § 20-47-207 if discharged.

(3) The treatment staff of the hospital or of the receiving facility or program may request additional involuntary admission orders as they are deemed necessary.

(b) **PROCEDURE.** (1) Any request for periods of additional involuntary admission pursuant to this section shall be made by a petition verified by the psychiatrist of the hospital or receiving facility or program treatment staff. The petition shall set forth the facts and circumstances forming the basis for the request.

(2) Upon the filing of a petition for additional involuntary admission, all rights enumerated in §§ 20-47-211 and 20-47-212 shall be applicable.

(c) **HEARING.** (1) A hearing on the petition seeking additional involuntary admission pursuant to this section must be held before the expiration of the period of involuntary admission.

(A) The hearing shall be open to the public and the news media, unless the person sought to be additionally involuntarily admitted shall request in writing that the hearing be closed.

(B) All written requests filed on behalf of the person sought to be additionally involuntarily admitted must be witnessed by the attorney who is representing the person.

(2) All testimony shall be recorded under oath and preserved.

(3) The need for additional involuntary admission shall be proven by clear and convincing evidence.

(d) **NEW ORIGINAL PETITION.** Nothing in this section shall prevent a new original petition from being filed subsequent to the release of a person involuntarily admitted pursuant to this subchapter.

History. Acts 1989, No. 861, § 10.

CASE NOTES

ANALYSIS

Criteria.
Evidence.

Criteria.

The criteria for involuntary admission prescribed in § 20-47-207(c) apply to hearings wherein an additional period of involuntary admission is sought. *Black v. State*, 52 Ark. App. 140, 915 S.W.2d 300 (1996).

Evidence.

Where there was no clear and convincing proof that patient needed additional

period of involuntary commitment but only proof that she needed mental-health treatment on a continuing basis, and that she had been involuntarily committed in the past, it was error for the probate court to grant the petition for involuntary commitment and order patient to undergo an additional 180-day period of involuntary commitment. *Black v. State*, 52 Ark. App. 140, 915 S.W.2d 300 (1996).

Cited: *Gravett v. McGowan*, 318 Ark. 546, 886 S.W.2d 606 (1994); *Smedley v. Smedley*, 319 Ark. 421, 892 S.W.2d 273 (1995).

20-47-216. Continuances.

Continuances requested by either party for any hearing provided for in this subchapter shall be granted only for good cause shown. "Good cause" includes obtaining a separate and independent evaluation or expert testimony on behalf of the person sought to be involuntarily admitted or allowing hospitalization of the person for medical treatment not associated with the person's mental illness, disease, or disorder.

History. Acts 1989, No. 861, § 11.

20-47-217. Appeals.

All involuntary admission orders authorized in this subchapter shall be considered final and appealable under Rule 2 of the Arkansas Rules of Appellate Procedure.

History. Acts 1989, No. 861, § 23.

20-47-218. Treatment.

(a) At all steps of the involuntary admission proceeding, the mental health treatments and conditions of treatment for the person named in the petition for involuntary admission shall be no more harsh, hazardous, or intrusive than necessary to achieve a successful treatment or objective for the person and shall involve no restrictions on physical movement or supervised, resident, outpatient, or inpatient care except as reasonably necessary for the administration of treatment for the protection of the person or others from physical injury.

(b) Specific limitations on treatment during detention shall include the following:

(1) Detention under this subchapter may only be in a hospital or receiving facility or program as defined in § 20-47-202;

(2)(A) During the initial period of evaluation and treatment, psychotherapy and oral or intermuscular medication may be used if the effects of the medication on the behavior of the individual do not exceed seventy-two (72) hours.

(B) Medication such as fluphenazine decanoate, commonly known as long-acting medication, or electroconvulsive therapy or psychosurgery shall not be used during this period;

(3)(A) Psychosurgery shall not be used during any involuntary admission period if the person is involuntarily admitted to a receiving facility or program.

(B) Electroconvulsive therapy may be used against a patient's wishes only if the probate court is presented with clear and convincing proof that such treatment is necessary; and

(4) Short-acting and long-acting medication may be used during the forty-five-day admission period and the one hundred eighty-day involuntary admission period.

(c) If the court at a forty-five-day admission period or a one hundred eighty-day involuntary admission hearing finds by clear and convincing evidence that the person is in need of treatment, it shall issue an order involuntarily admitting the person to the custody of the administrator or his or her designee for care and treatment within a receiving facility or program which is located within the person's geographic area of residence or to an appropriate hospital as defined in § 20-47-202.

(d)(1) A treatment plan will be submitted to the court for approval at hearings held under §§ 20-47-214 and 20-47-215.

(2) The treatment plan will be submitted by the person's treatment staff of the hospital or the receiving facility or program to which the person has been involuntarily admitted.

(3) The approved treatment plan shall be incorporated by reference as a part of the court's order of involuntary admission.

(e) Notification shall be provided to the court by the person's treatment staff upon a change in the person's treatment plan if the change results in the person being treated in a more restrictive setting or manner.

History. Acts 1989, No. 861, § 15.

20-47-219. Return of persons absent from treatment — Noncompliance with treatment plan — Effect on order.

(a) If any person involuntarily admitted to a receiving facility or program or hospital for care pursuant to this subchapter absents himself or herself from a receiving facility or program or hospital without leave or fails to comply with the court-approved treatment plan, the person will be returned, upon the request of the person's treatment staff, to the receiving facility or program or hospital by the sheriff of the county or law enforcement officer of the city of the first class in which the individual is physically present or the hospital or

receiving facility or program security personnel without further proceedings.

(b) Notification shall be provided to the court by the person's treatment staff if a person absents himself or herself without leave or fails to comply with the court-approved treatment plan.

(c) A person's noncompliance with the court-approved treatment plan or absenting himself or herself from a receiving facility or program or hospital without leave shall not vacate an order; the order shall remain in effect until abated or changed by the issuing court or until the expiration of one (1) year.

History. Acts 1989, No. 861, § 18.

20-47-220. Fundamental rights.

(a) No person receiving treatment for mental illness shall be deprived of any legal right to which all citizens are entitled except as provided for by law.

(b) No person shall be deemed incompetent to manage his or her affairs, to contract, to hold professional, occupational, or motor vehicle driver's licenses, to marry or to obtain a divorce, to vote, to make a will, or to exercise any other civil right solely by reason of that person's admission to the mental health services system.

(c) No person receiving mental health services shall be subjected to abuse or neglect.

(d) No person receiving mental health services shall be discriminated against in any manner because of race, color, sex, religion, national origin, age, handicap, or degree of disability.

(e) Persons receiving mental health services shall be treated with dignity and respect.

History. Acts 1989, No. 861, § 16.

20-47-221. Patient or client advocate.

(a) The deputy director shall designate a patient or client advocate for the three state mental health facilities located in Little Rock, Benton, and Jonesboro. The designated patient or client advocate in these facilities shall report directly to the deputy director.

(b) The administrator of each receiving facility or program shall designate a patient or client advocate for that facility or program who shall report directly to the administrator.

(c) The patient or client advocate's job duties in this capacity shall consist primarily of:

- (1) Ensuring that each patient or client is aware of his or her rights;
- (2) Investigating complaints of patients or clients;
- (3) Assisting in training staff of the receiving facility or program regarding patient's rights; and

(4) Acting as an advocate on behalf of a patient or client who is unable to register a complaint because of his or her mental or physical condition.

History. Acts 1989, No. 861, § 17.

20-47-222. Transfer and admission of residents who become ill in another state.

The deputy director or designee shall have authority to authorize the transfer and admission to a receiving facility or program of any person who is a legal resident of the state and who may become mentally ill while a transient in another state, pursuant to the Interstate Compact on Mental Health, § 20-50-101 et seq.

History. Acts 1989, No. 861, § 19.

20-47-223. Admission not adjudication of incapacity.

No person admitted voluntarily or involuntarily to a receiving facility or program or hospital under this subchapter shall be considered incapacitated *per se* by virtue of admission.

History. Acts 1989, No. 861, § 22.

20-47-224. Conversion from involuntary to voluntary status.

(a) At any time during the involuntary admission period, a person may be converted to a voluntary admission status if the person's treating physician or treatment staff psychiatrist files a written statement of consent with the court.

(b) The court shall dismiss the action immediately upon the filing of the statement.

History. Acts 1989, No. 861, § 12.

20-47-225. Liability for charges.

Every person who is legally liable for the support of a person admitted to a receiving facility or program or hospital pursuant to this subchapter shall be liable jointly and severally with the estate of the person for the charges made by the receiving facility or program or hospital for the treatment of the patient regardless of whether the person was a party to or consented to the admission of the person to a receiving facility or program or hospital and regardless of the extent of the estate of the person.

History. Acts 1989, No. 861, § 21.

20-47-226. Forms.

The Director of the Administrative Office of the Courts and the Prosecutor Coordinator shall jointly prescribe all other forms reasonably necessary to carry out this subchapter, provided that the deputy director or designee may prescribe forms pertaining to preadmission history to accompany the person when presented for admission, to be waived in dire emergencies. The deputy director or designee shall assist the director in prescribing forms for the required medical certificates. Substantial adherence to the prescribed forms will suffice in any instance.

History. Acts 1989, No. 861, § 20.

20-47-227. Exclusion from liability.

No officer, physician, or other person shall be held civilly liable for his or her actions pursuant to this subchapter in the absence of proof of bad faith, malice, or gross negligence.

History. Acts 1989, No. 861, § 14.

20-47-228. Assurance of compliance.

(a) To assure compliance under this subchapter, the Division of Mental Health Services, through its authorized agents, may visit or investigate any state mental health system program or facility to which persons are voluntarily or involuntarily admitted under this subchapter.

(b) The division shall by July 1 of each year designate receiving facilities and programs within prescribed geographic areas of the state for purposes of voluntary admissions or involuntary commitments under this subchapter and establish ongoing mechanisms for review and refinement of the state mental health system.

History. Acts 1989, No. 861, § 26.

SUBCHAPTER 3 — RESIDENTIAL CARE FACILITIES

SECTION.

20-47-301. Legislative findings and intent.

SECTION.

20-47-302. Task force.

20-47-303. Per diem reimbursement.

Publisher's Notes. Former subchapter 3, concerning payment for treatment, was repealed by Acts 1987, No. 243, § 28. The former subchapter was derived from the following sources:

20-47-301. Acts 1980 (1st Ex. Sess.), No. 34, § 1; 1980 (1st Ex. Sess.) No. 61, § 1;

1983, No. 408, § 1; A.S.A. 1947, § 59-1425.

20-47-302. Acts 1980 (1st Ex. Sess.), No. 34, § 1; 1980 (1st Ex. Sess.) No. 61, § 1; 1983, No. 408, § 1; A.S.A. 1947, § 59-1425.

20-47-303. Acts 1980 (1st Ex. Sess.), No.

34, § 2; 1980 (1st Ex. Sess.), No. 61, § 2; A.S.A. 1947, § 59-1426.

20-47-304. Acts 1980 (1st Ex. Sess.), No. 34, § 2; 1980 (1st Ex. Sess.), No. 61, § 2; A.S.A. 1947, § 59-1426.

20-47-305. Acts 1980 (1st Ex. Sess.), No. 34, § 2; 1980 (1st Ex. Sess.), No. 61, § 2; A.S.A. 1947, § 59-1426.

Effective Dates. Acts 1999, No. 1421, § 7: Apr. 13, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that lack of planning and lack of resources have created an urgent situation with regard to the care of residents in residential care facilities, and that both immedi-

ate and long-term solutions must be developed to solve the crisis. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

20-47-301. Legislative findings and intent.

The General Assembly recognizes that the state encouraged the placement of mentally ill residents into residential care facilities over a decade ago and has taken various approaches to funding since then. The General Assembly also recognizes that there are inherent problems with the current system that create disincentives for proper care and physical environments. The purpose of this subchapter is to provide short-term solutions and long-term solutions to the problem of caring for mentally ill persons, elderly persons, and other residents in residential care facilities.

History. Acts 1999, No. 1421, § 1.

20-47-302. Task force.

(a) Residential care facilities and the State of Arkansas face special problems when caring for the mentally ill. The chairs of the House Interim Committees on Public Health, Welfare, and Labor and the Senate Interim Committee on Public Health, Welfare, and Labor shall establish a task force with equal representation from residential care facilities, community mental health centers, advocates for the mentally ill, and the Division of Mental Health and the Division of Medical Services. The task force shall also include at least one (1) member each from the Senate and House Committees on Public Health, Welfare, and Labor.

(b) The task force shall present a proposal at the 2001 legislative session for establishment and maintenance of a residential program designed to address the unique needs of the mentally ill. The task force's recommendations shall include adequate safeguards for residents, reimbursement for residential care facilities, and financing opportunities that will encourage and enable residential care facilities to build smaller, more home-like settings for the care of the mentally ill.

History. Acts 1999, No. 1421, § 2.

20-47-303. Per diem reimbursement.

(a) The Department of Human Services shall reimburse residential care facilities on a per diem basis, subject to approval by the Health Care Financing Administration, and shall develop Medicaid provider regulations appropriate for a congregate setting and per diem reimbursement. The department shall make the best efforts to obtain approval from the administration.

(b) The department shall provide copies to the Administrative Rules and Regulations Committee of the Legislative Council, providers, and the public of all state plan amendments, documentation, and correspondence submitted to or received from the administration in regard to this section and shall work jointly with provider representatives in seeking administration approval.

History. Acts 1999, No. 1421, § 3.

SUBCHAPTER 4 — COOPERATION AMONG INSTITUTIONS

SECTION.

- 20-47-401. Contracts with the Department of Veterans Affairs and certain other federal agencies.
- 20-47-402. Commitment to Department of Veterans Affairs and certain other federal hospitals — Generally.
- 20-47-403. Commitment to Department of Veterans Affairs and certain other federal hospitals — Judgment or order.

SECTION.

- 20-47-404. Commitment to Department of Veterans Affairs and certain other federal hospitals — Transfer.
- 20-47-405. Tubercular mental patients — Transfer.
- 20-47-406. Department of Human Services agreements for medical care of indigent mentally ill or tubercular.

Publisher's Notes. Acts 1971, No. 433, § 1 provided: "It is hereby found and determined by the General Assembly that the laws relating to the State Hospital, mental health, and mentally ill persons have been enacted piecemeal over a period of many years and that a great number of these laws are duplicating, conflicting, outmoded, and in urgent need of clarification and codification. It is the purpose and intent of the General Assembly in enacting this Act to clarify, update, and codify the various laws of the State relating to the State Hospital, mental health, and mentally ill persons."

Acts 1971, No. 433, ch. 10, § 1, provided: "It is the specific intent of the

codification of the mental health laws contained in this Act to only effect those laws pertaining to mental health. Nothing in this Act shall be deemed to repeal or modify the provisions of Act 411 of 1955. No other laws shall be affected in any manner, nor shall the inclusion of such laws within this code in any way repeal or affect those laws as they otherwise apply."

Cross References. Commitment under the Uniform Veteran's Guardianship Act, § 28-66-118.

Effective Dates. Acts 1971, No. 433, ch. 10, § 4: Mar. 29, 1971. Emergency clause provided: "It is hereby found and determined by the General Assembly that the various mental health laws have been

enacted over a period of one hundred years and are not properly organized so that they can be easily found; that many of these laws are antiquated and archaic and are in great need of updating in order to be useful; that the mental health laws need to be placed in a comprehensive code for easy reference by those persons inter-

ested in and who use these laws; and that only by the immediate passage of this Act can this be achieved. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall become effective from and after its passage and approval."

20-47-401. Contracts with the Department of Veterans Affairs and certain other federal agencies.

(a) The Director of the Arkansas State Hospital is given power and authority to make contracts with the federal Department of Veterans Affairs or any other federal agency for the hospitalization of any patients who are veterans and eligible for hospitalization by the federal government on such terms of payment to the Arkansas State Hospital as established by the Department of Human Services State Institutional System Board.

(b) The director is also authorized and empowered to ratify and confirm any contract, either express or implied, which may have been made in the past for the hospitalization of veterans. The director is authorized to receive and collect any funds that may be due from the federal government for hospitalization.

History. Acts 1971, No. 433, ch. 3,
§ 26; A.S.A. 1947, § 59-426.

20-47-402. Commitment to Department of Veterans Affairs and certain other federal hospitals — Generally.

(a) Whenever, in any proceeding under the laws of this state for the commitment of a person alleged to be of unsound mind or otherwise in need of confinement in a hospital or other institution for his or her proper care, it is determined after the adjudication of the status of the person as may be required by law that commitment to a hospital or other institution because of mental disease is necessary for safekeeping or treatment and it appears that the person is eligible for care or treatment by the federal Department of Veterans Affairs or other agency of the United States Government, then the court, upon receipt of a certificate from the federal Department of Veterans Affairs or other agency showing that facilities are available and that the person is eligible for care or treatment therein, may commit the person to the federal Department of Veterans Affairs or other agency.

(b) The person whose commitment is sought shall be personally served with notice of the pending commitment proceeding in the manner as provided by the law of this state. Nothing in this act shall affect his or her right to appear and be heard in the proceedings.

(c) Upon commitment, the person when admitted to any facility operated by any agency within or without this state shall be subject to

the rules and regulations of the federal Department of Veterans Affairs or other agency.

(d) The chief officer of any facility of the federal Department of Veterans Affairs or an institution operated by any other agency or the United States to which the person is so committed shall, with respect to the person, be vested with the same powers as directors of state hospitals for mental diseases within the state are with respect to retention of custody, transfer, parole, or discharge.

(e) Jurisdiction is retained in the committing court or other appropriate court of this state any time to inquire into the mental condition of the person so committed and to determine the necessity for continuance of his or her restraint, and all commitments pursuant to this act are so conditioned.

History. Acts 1971, No. 433, ch. 3, § 28; A.S.A. 1947, § 59-428.

Publisher's Notes. This section may supersede § 28-66-118.

Meaning of "this act". Acts 1971, No. 433 codified as §§ 9-14-104, 16-86-101 — 16-86-113, 20-46-101 — 20-46-104, 20-46-

201 — 20-46-205, 20-46-301, 20-46-303, 20-46-309 — 20-46-314, 20-47-109, 20-47-401 — 20-47-406, 20-48-102, 20-49-101, 20-49-102, 20-49-201 — 20-49-207, 20-49-301 — 20-49-304, 20-50-101 — 20-50-106, 20-64-801, 20-64-803 — 20-64-811.

20-47-403. Commitment to Department of Veterans Affairs and certain other federal hospitals — Judgment or order.

(a) The judgment or order of commitment by a court of competent jurisdiction of another state or of the District of Columbia committing a person to the federal Department of Veterans Affairs or other agency of the United States Government for care or treatment shall have the same force and effect in relation to the committed person while in this state as exists in the jurisdiction in which is situated the court entering the judgment or making the order.

(b) The courts of the committing state or of the District of Columbia shall be deemed to have retained jurisdiction of the person so committed for the purpose of inquiring into the mental condition of the person and of determining the necessity for continuance of his or her restraint, as is provided in § 20-47-402 with respect to persons committed by the courts of this state.

(c) Consent is given to the application of the law of the committing state or district in respect to the authority of the chief officer of any facility of the federal Department of Veterans Affairs or of any institution operated in this state by any other agency of the United States, to retain custody, or to transfer, parole, or discharge the committed person.

History. Acts 1971, No. 433, ch. 3, § 28; A.S.A. 1947, § 59-428.

Publisher's Notes. This section may supersede § 28-66-118.

20-47-404. Commitment to Department of Veterans Affairs and certain other federal hospitals — Transfer.

(a) Upon receipt of a certificate of the federal Department of Veterans Affairs or other agency of the United States stating that facilities are available for the care or treatment of any person who is committed to any hospital for the mentally ill or other institution for the care or treatment of persons similarly afflicted and that the person is eligible for care or treatment, then the director of the institution where the person is committed may cause the transfer of the person to the federal Department of Veterans Affairs or other agency of the United States for care or treatment.

(b) Upon effecting any transfer, the committing court or proper officer thereof shall be notified of the transfer by the transferring agency.

(c) No person shall be transferred to the federal Department of Veterans Affairs or other agency of the United States if he or she is confined pursuant to conviction of any felony or misdemeanor or if he or she has been acquitted of the charge solely on the grounds of insanity unless prior to transfer the court or other authority originally committing the person shall enter an order for the transfer after appropriate motion and hearing.

(d) Any person transferred as provided in this section shall be deemed to be committed to the federal Department of Veterans Affairs or other agency of the United States pursuant to the original commitment.

History. Acts 1971, No. 433, ch. 3, § 28; A.S.A. 1947, § 59-428.

Publisher's Notes. This section may supersede § 28-66-118.

20-47-405. Tubercular mental patients — Transfer.

(a) Any person who is committed to the Arkansas State Hospital for treatment of a mental disease and who has or who develops tuberculosis may, in the discretion of the Director of the Arkansas State Hospital, be transferred to the custody of the Superintendent of the Arkansas Tuberculosis Sanatorium or to a private hospital for treatment of his or her tuberculosis.

(b) The person so transferred shall be returned to the Arkansas State Hospital when his or her tuberculosis has improved to the point where it is not dangerous to himself or herself or others.

History. Acts 1971, No. 433, ch. 3, § 27; A.S.A. 1947, § 59-427.

20-47-406. Department of Human Services agreements for medical care of indigent mentally ill or tubercular.

(a) The Arkansas State Hospital and other state institutions are authorized to enter into agreements with the Department of Human Services to establish and maintain a medical care program for the

indigent mentally ill, mentally retarded, and tubercular at the Arkansas State Hospital and any other state institution and to transfer funds to the Department of Human Services Fund pursuant to the agreement.

(b) The agreement made between the Arkansas State Hospital or other institution and the department shall be in compliance with federal law and shall meet qualifications necessary for federal funds to be paid for the care of indigent mentally ill, mentally retarded, and tubercular in the Arkansas State Hospital or other institution.

(c) In order to reimburse the fund for expenditures made by the department in accordance with agreements made with the Arkansas State Hospital and other institutions, the Chief Fiscal Officer of the State shall make rules and regulations for transfers from the respective State Treasury funds or accounts from which the institutions making agreements derive their financial support to the fund in keeping with the provisions of the agreement made between the Arkansas State Hospital or other state institutions and the department.

History. Acts 1971, No. 433, ch. 3, §§ 29-31; A.S.A. 1947, §§ 59-429 — 59-431.

Cross References. Funds for treatment of medically indigent persons, § 20-46-302.

SUBCHAPTER 5 — CHILD AND ADOLESCENT SERVICE SYSTEM PROGRAM

SECTION.	SECTION.
20-47-501. Purpose.	cent Service System Program Coordinating Council planning teams.
20-47-502. Definitions.	
20-47-503. System of care.	
20-47-504. Components of the system.	20-47-507. Child and Adolescent Service System Program Coordinating Council staff.
20-47-505. Child and Adolescent Service System Program Coordinating Council.	20-47-508. Evaluation and treatment.
20-47-506. Regional Child and Adoles-	20-47-509. [Repealed.]

Effective Dates. Acts 1997, No. 312, § 24: Feb. 28, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that the duties of the Joint Interim Committee on Children and Youth shall be transferred to the Senate Interim Committee on Children and Youth; that such transfer should begin upon the adjournment of this Regular Session; and that unless this emergency clause is adopted the transfer will not occur until ninety days past the Regular Session. Therefore, an emergency is

declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

20-47-501. Purpose.

The General Assembly finds that services to children are provided by various departments and agencies at both the state and local level,

often without appropriate collaboration. The General Assembly declares that the purpose of this subchapter is to establish a structure for coordinated policy development, comprehensive planning, collaborative budgeting, and resource allocation for services to children with emotional disturbance and their families. It is further the intention of this subchapter to build on existing resources and to design and implement a coordinated service system for children with emotional disturbances that is child-centered, family-centered, and community-based.

History. Acts 1991, No. 964, § 1; 2001, No. 1517, § 1.

Amendments. The 2001 amendment

inserted “and resource allocation,” substituted “that is child-centered” for “which is child-” and made related changes.

20-47-502. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) “Case management” means those efforts that assure that necessary services for the child and family are obtained and monitored. Such efforts shall include coordination across agencies for evaluations, the provision of services based on assessments and evaluations that result in the development of an interagency service plan, the review for adequacy of services through client progress, and maintaining cooperation among agencies;

(2) “Case review” means a multiagency effort to design and provide a service delivery plan for difficult-to-serve children who may require unusual services or service configurations. When utilizing a group process for reaching service delivery decisions, the group shall be composed of those who carry sufficient authority to assure timely provision of services;

(3) “CASSP” means the Child and Adolescent Service System Program;

(4) “Child with emotional disturbance” means an individual under the age of eighteen (18), or under the age of twenty-one (21) if program services began prior to the age of eighteen (18), who is exhibiting inappropriate emotional, interpersonal, or behavioral problems within the home, preschool program, school, or community given his or her age, intellectual level, and cultural background, whose degree of dysfunction is at least disruptive and often disabling, whose problems persist after efforts to deal with the problems have been made by significant others in the child’s social environment, and who meets specific criteria established by the Child and Adolescent Service System Program Coordinating Council;

(5) “Collaborative evaluation” means an intensive appraisal of a child that provides more of an in-depth analysis than a screening and assessment. The evaluation shall be designed, obtained, and utilized collaboratively by those agencies identifying a need for the information;

(6) “Flexible funds” means a specific fiscal allocation designated for atypical expenditures to meet extraordinary needs of a child and family identified in the service plan. Decisions for expenditure of flexible funds

shall be made at the regional or local level and must be approved by all involved service providers;

(7) "Interagency service plan" means the integrated plan of care that is individualized for each child or adolescent receiving program services and is developed through the collaboration of all agencies providing services for that child;

(8) "Regional plan" means a written strategy developed by regional program teams that specifies the kind, mix, and priority of services to be provided in each community mental health center catchment area. The regional plan shall address all components of the system of care, shall be based on the principles for the system of care provided in this section and on the service needs of the children with emotional disturbance in the region, shall include procedures for evaluating services provided to children with emotional disturbance and their families, and shall be reviewed annually by the council, and upon approval shall be incorporated into the statewide plan;

(9) "Screening and assessment" means an initial appraisal of a child identified or suspected of having emotional disturbance that provides sufficient information to make decisions about service needs;

(10) "Service array" means those services in the system of care that address the varying areas of needs of children with emotional disturbance and their families and shall include, but not be limited to: mental health services, substance abuse services, social services, education services, health services, vocational services, recreational services, operational services, case management, advocacy, and other necessary services;

(11) "Single point of entry" means a unit, agency, or group designated as the gatekeeper for the service system for children with emotional disturbance and their families;

(12) "Statewide plan" means a comprehensive strategy that identifies the procedures for developing and implementing the system of care that is prepared by the council incorporating all regional plans; and

(13) "System of care" means a comprehensive spectrum of mental health and other necessary services organized into a coordinated network to meet the multiple and changing needs of children with emotional disturbance, based on principles set forth in this subchapter.

History. Acts 1991, No. 964, § 2; 2001, No. 1517, § 2.

Amendments. The 2001 amendment, in (1), substituted "that assure" for "which assure" and substituted "on assessments...plan" for "on integrated assessments and evaluations"; in (4), inserted "or under the age of twenty-one (21) if program services began prior to the age of eighteen (18)," inserted "preschool program," inserted "or her," and deleted "CASSP" preceding "Child and Adolescent"; deleted (5) and redesignated the remaining subdivisions accordingly; in

present (5), substituted "that provides" for "which provides" and substituted "a screening" for "an integrated screening"; rewrote present (7); in present (8), substituted "program teams that" for "CASSP teams which," substituted "in this section" for "herein" and substituted "council" for "CASSP Coordinating Council"; added (9); in (12), substituted "that is prepared by the council" for "which is prepared by the CASSP Coordinating Council" and added "and" to the end; and made minor punctuation and stylistic changes throughout.

20-47-503. System of care.

The following guiding principles shall be incorporated into the system of care:

- (1) Services shall be child-centered and family-centered and give priority to keeping children with their families;
- (2) Services shall be community-based, with decision-making responsibility and management at the regional and local levels;
- (3) Services shall be comprehensive, addressing the child's physical, educational, social, and emotional needs;
- (4) Agency resources and services shall be shared and coordinated;
- (5) Services shall be provided in the least restrictive setting consistent with effective services and as close to home as appropriate;
- (6) Services shall be culturally and ethnically sensitive;
- (7) Services shall address the unique needs and potential of each child and shall be sufficiently flexible to meet highly individualized child and family needs;
- (8) Services shall promote early identification and intervention; and
- (9) Services shall be designed to protect the rights of children.

History. Acts 1991, No. 964, § 3.

20-47-504. Components of the system.

The components of the system of care shall include, but not be limited to:

- (1) Single point of entry;
- (2) Screening and assessment;
- (3) Case management;
- (4) Case review;
- (5) Collaborative evaluation; and
- (6) Service array.

History. Acts 1991, No. 964, § 4; 2001, No. 1517, § 3. substituted "Screening" for "Integrated screening" in (2).

Amendments. The 2001 amendment

20-47-505. Child and Adolescent Service System Program Coordinating Council.

(a)(1) There is hereby created a Child and Adolescent Service System Program Coordinating Council which shall meet on a quarterly basis and at other times deemed necessary to perform its functions.

(2) The coordinating council shall include the following persons to be selected and appointed by the directors of the Department of Education, the Department of Health, and the Department of Human Services:

- (A) At least three (3) parents, parent surrogates, or family members of a child or children with emotional disturbance;
- (B) A member of an ethnic minority;
- (C) A child advocate;

(D) Child and Adolescent Service System Program coordinators from each of the certified community mental health centers;

(E)(i) One (1) or more representatives from specific divisions or agencies in the Department of Human Services, the Department of Health, and the Department of Education.

(ii) Each representative shall have official duties related to the delivery of mental health services for children and adolescents with emotional disturbances.

(iii) Specific designations of membership of the coordinating council shall be determined through interdepartmental and intradepartmental agreements that will be renewed on an annual basis; and

(F)(i) At least two (2) representatives from private or public agencies or organizations that are stakeholders in mental health services for children and adolescents with emotional disturbances.

(ii) The directors will jointly appoint an appropriate number of stakeholders.

(b) The coordinating council shall:

(1) Advise and report to the directors on matters of policy and programs related to children with emotional disturbance and their families;

(2) Identify and recommend fiscal, policy, training, and program initiatives and revisions based on needs identified in the planning process;

(3) Provide specific guidelines for the development of regional services and plans based on the guiding principles of the system of care;

(4) Review and approve regional plans developed by regional program teams and incorporate the regional plans into the statewide plan;

(5) Assure that mechanisms for accountability are developed and implemented;

(6) Submit a statewide plan and budget recommendations to the directors on or before March 15 of each even-numbered year thereafter preceding the legislative session;

(7) Develop and recommend special projects to the directors;

(8) Provide a written report on a quarterly basis to the Senate Interim Committee on Children and Youth that summarizes progress implementing this subchapter;

(9) Establish guidelines and procedures for the voting membership, officers, and annual planning of both the coordinating council and the regional program planning teams which the coordinating council will review and update on an annual basis; and

(10) Make recommendations for corrective action plans to the directors in the event that a regional program planning team does not produce a timely regional plan that meets a plan of care or fails to implement the approved regional plan.

the remaining subdivisions accordingly; and substituted "Senate Interim Committee" for "Joint Committee" in present (a)(14) and (b)(8).

The 2001 amendment substituted "coordinating council" for "council" in (a)(2); inserted "parent surrogates, or family members" in (a)(2)(A); rewrote (a)(2)(D); rewrote (a)(2)(E)(i) through (a)(2)(E)(iii);

deleted (a)(2)(E)(iv) through (a)(2)(O) and added present (a)(2)(F)(i) through (a)(2)(F)(ii); substituted "implemented" for "incorporated into the regional plans" in (b)(5); deleted "and" from the end of (b)(7); made minor punctuation and stylistic changes in (b)(8) and added (b)(9) and (b)(10).

20-47-506. Regional Child and Adolescent Service System Program Coordinating Council planning teams.

(a) A regional Child and Adolescent Service System Program planning team shall be established in each community mental health center catchment area.

(b)(1) Each team shall include individuals who are not state employees and who are not providers of services to children with emotional disturbance or their families but who are parents, parent surrogates, family members, or consumers.

(2) Every effort shall be made to encourage and assist parents, parent surrogates, family members, consumers, and advocates to participate in program planning teams.

(c) The regional program planning teams shall include agency representatives from the community mental health centers, the Division of Developmental Disabilities Services, the Division of Children and Family Services, the Department of Health, and the local school districts or educational cooperatives.

(d) Additional representatives of other local services and programs shall be added by the regional team and will include representatives from the juvenile justice system or youth services providers and local preschool programs, if possible.

(e) Each regional team member may appoint a single person to serve as his or her proxy.

(f) The regional program planning team shall:

(1) Advise and report to the Child and Adolescent Service System Program Coordinating Council on matters of policies, resources, programs, and services relating to children with emotional disturbance and their families;

(2) Identify and recommend program initiatives and revisions based on area and community-based needs;

(3) Submit a regional plan and guidelines for interagency service delivery teams to the coordinating council on or before February 15 of each even-numbered year preceding the legislative session;

(4) Develop and implement special projects for community-based services; and

(5)(A) Ensure that interagency service teams are established and utilized in coordinating services for children and adolescents referred to the program.

(B) Each service delivery team shall have sufficient and appropriate representation from identified service providers and will complete

an interagency service plan for each child or adolescent receiving program services.

(C) Every effort shall be made to assist parents, parent surrogates, family members, and consumers to participate as members of the interagency service delivery team.

History. Acts 1991, No. 964, § 6; 2001, No. 1517, § 5.

Amendments. The 2001 amendment substituted “Child and Adolescent Service System Program planning team” for “CASSP team” in (a); in (b)(1), substituted “Each” for “At least fifty-one percent (51%) of each,” substituted “shall include” for “membership shall consist of,” and substi-

tuted “and who are” for “or who are”; added (b)(2); rewrote (c) and (d); substituted “program planning team” for “CASSP team” in (f); substituted “Child and Adolescent Service System Program” for “CASSP” in (f)(1); rewrote (f)(3); added “and” to the end of (f)(4) and made related changes; and added (f)(5).

20-47-507. Child and Adolescent Service System Program Coordinating Council staff.

(a) The staff for the Child and Adolescent Service System Program Coordinating Council shall be provided by the Child and Adolescent Service System Program project for the first two (2) years and subsequently by the Division of Mental Health Services.

(b) The division will serve as the coordinating agency and shall develop and support the regional program team network and the coordinating council and shall provide training and technical assistance relevant to the system of care.

(c) Annual site reviews and program evaluations of regional program teams will be coordinated by the division and will involve a multiagency team of professionals, family members, consumers, and advocates.

(d) The division’s program staff shall provide an annual report summarizing program regional and coordinating council activities, strategic plans, and outcomes to the directors of the Department of Human Services, the Department of Education, and the Department of Health each year on or before October 15.

History. Acts 1991, No. 964, § 7; 2001, No. 1517, § 6.

Amendments. The 2001 amendment rewrote (a) and (b) and added (c) and (d).

20-47-508. Evaluation and treatment.

(a) Children suspected of having emotional disturbance who are referred for Child and Adolescent Service System Program services shall be given a screening and assessment through the single point of entry, after which an initial interagency service plan shall be defined and developed.

(b) The community mental health centers are hereby designated as the single point of entry.

(c) The assessment shall be conducted by the community mental health center serving the area in which the child or adolescent lives.

(d) The community mental health center shall be accessible on a twenty-four-hour basis, shall accept referrals from multiple sources, have interagency linkages, involve parents, ensure immediate access to crisis intervention services, and have authority to seek needed services.

(e) If after screening and assessment or collaborative evaluations it is determined that a child with emotional disturbance needs multiagency services, then initial and subsequent individualized multiagency service plans for the child and the child's family shall be jointly developed by the appropriate local or regional representatives of the community mental health centers, of the Department of Human Services county office, of the Department of Health, of the Special Education Division of the Department of Education, of the local school district, and of any other service provider identified to meet the needs of the child and his or her family. The individualized service plan shall reflect an integrated service delivery that specifies services or programs with funding to be provided by each agency. The service plan shall also designate responsibility for case management.

History. Acts 1991, No. 964, § 8; 2001, No. 1517, § 7.

Amendments. The 2001 amendment, in (a), inserted "who are referred for Child and Adolescent Service System Program services," substituted "a screening" for "an

integrated screening," and inserted "inter-agency"; added present (c) and redesignated the remaining subsections accordingly; substituted "community mental health center" for "unit" in present (d); and rewrote present (e).

20-47-509. [Repealed.]

Publisher's Notes. This section, concerning budget requests, was repealed by

Acts 2001, No. 1517, § 8. The section was derived from Acts 1991, No. 964, § 9.

CHAPTER 48

TREATMENT OF THE DEVELOPMENTALLY DISABLED

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. ARKANSAS MENTAL RETARDATION ACT.
3. COOPERATIVE AGREEMENTS.
4. HUMAN DEVELOPMENT CENTERS GENERALLY.
5. HUMAN DEVELOPMENT CENTERS — PROPERTY AND FINANCES.
6. LOCATION ACT FOR COMMUNITY HOMES FOR DEVELOPMENTALLY DISABLED PERSONS.
7. RELATIONSHIP BETWEEN STATE AND COMMUNITIES TO PROVIDE FOR COMMUNITY-BASED SERVICES.
8. CRIMINAL RECORDS CHECKS FOR EMPLOYEES OF PROVIDERS OF CARE TO DISABLED ADULTS.

A.C.R.C. Notes. References to "this chapter" in the text of chapter 48, subchapters 1-5, may not apply to §§ 20-48-104 and 20-48-105 and subchapters 6 and 7, which were enacted subsequently.

Acts 2001, No. 1292, § 1, provided: "The

House Interim Committee and Senate Interim Committee on Public Health, Welfare, and Labor shall study the feasibility of including private intermediate care facilities for the mentally retarded and all residential programs licensed by the Divi-

sion of Developmental Disabilities of The Department of Human Services among facilities affected by the quality assurance fee.

“The House Interim Committee and Senate Interim Committee on Public Health, Welfare, and Labor shall study

the feasibility of including private intermediate care facilities for the mentally retarded and all residential programs licensed by the Division of Developmental Disabilities of The Department of Human Services among facilities affected by the quality assurance fee.”

RESEARCH REFERENCES

ALR. Applicability and application of zoning regulations to single residences employed for group living of mentally retarded persons. 32 ALR 4th 1018.

Restrictive covenants: community residence for mentally disabled persons as violation of. 41 ALR 4th 1216.

Validity, construction, and effect of stat-

ute requiring consultation with, or approval of, local governmental unit prior to locating group home, halfway house, or similar community residence for the mentally ill, 51 ALR 4th 1096.

Am. Jur. 53 Am. Jur. 2d, Mentally Impaired Persons, § 3 et seq.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

20-48-101. Definitions.

20-48-102. Abuse, ridicule, and teasing prohibited.

20-48-103. Purpose — Use of certain funds.

20-48-104. Intermediate Care Facility for

SECTION.

Mentally Retarded program — Administration.

20-48-105. Community-based service providers — Extension or expansion of services.

Preambles. Acts 1981, No. 513 contained a preamble which read: “Whereas, the existing name and official title of Mental Retardation-Developmental Disabilities Services (MR-DDS) and the existing name and official title of five of the six institutions it operates, the Arkansas Children’s Colony system, have proven to be confusing and detrimental to the proper commission and effectiveness of the said Division’s official business and that of the policy-making board under which it functions. The name of the Division is redundant by definition, and the name of the institutional system is inaccurate with respect to clients served and programs provided.
Now therefore...”

Effective Dates. Acts 1971, No. 433, ch. 10, § 4: Mar. 29, 1971. Emergency clause provided: “It is hereby found and determined by the General Assembly that the various mental health laws have been enacted over a period of one hundred years and are not properly organized so

that they can be easily found; that many of these laws are antiquated and archaic and are in great need of updating in order to be useful; that the mental health laws need to be placed in a comprehensive code for easy reference by those persons interested in and who use these laws; and that only by the immediate passage of this Act can this be achieved. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall become effective from and after its passage and approval.”

Acts 1985, No. 777, § 23: July 1, 1985. Emergency clause provided: “It is hereby found and determined by the Seventy-Fifth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1985 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of

the Regular Session, the delay in the effective date of this Act beyond July 1, 1985 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1985."

Acts 1989 (1st Ex. Sess.), No. 246, § 26: July 1, 1989. Emergency clause provided: "It is hereby found and determined by the Seventy-Seventh General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1989 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1989 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1989."

Acts 1991, No. 922, § 28: July 1, 1991. Emergency clause provided: "It is hereby found and determined by the Seventy-Eighth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1991 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1991 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being neces-

sary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1991."

Acts 1991, No. 1129, § 33: July 1, 1991. Emergency clause provided: "It is hereby found and determined by the Seventy-Eighth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1991 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1991 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1991."

Acts 1997, No. 1360, § 132: July 1, 1997. Emergency clause provided: "It is hereby found and determined by the Eighty-First General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1997 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1997 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety, Section 115 shall be in full force and effect from and after the date of passage and approval and the remainder of the Act shall be in full force and effect from and after July 1, 1997."

20-48-101. Definitions.

As used in this chapter, unless the context otherwise requires:

- (1) "Developmental disability" means a disability of a person which:

(A)(i) Is attributable to mental retardation, cerebral palsy, epilepsy, or autism;

(ii) Is attributable to any other condition of a person found to be closely related to mental retardation because it results in an impairment of general intellectual functioning or adaptive behavior similar to those of mentally retarded persons or requires treatment and services similar to those required for such persons; or

(iii) Is attributable to dyslexia resulting from a disability described in subdivision (1)(A) of this section;

(B) Originates before the person attains the age of twenty-two (22) years;

(C) Has continued or can be expected to continue indefinitely; and

(D) Constitutes a substantial handicap to the person's ability to function without appropriate support services, including, but not limited to, planned recreational activities, medical services such as physical therapy and speech therapy, and possibilities for sheltered employment or job training;

(2) "Developmentally disabled person" means a person with a developmental disability; and

(3) "Human development center" means an institution maintained for the care and training of persons with developmental disabilities.

History. Acts 1981, No. 513, § 1;
A.S.A. 1947, § 59-1018; Acts 1993, No.
729, § 1.

20-48-102. Abuse, ridicule, and teasing prohibited.

(a) It shall be unlawful for any person to willfully tease, ridicule, or abuse any mentally deficient or mentally retarded person declared to be such by a court of competent jurisdiction, or who, in the judgment of two (2) regularly licensed physicians, may be found to be such.

(b) Any person violating the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be punished by a fine in a sum not to exceed one hundred dollars (\$100) or by six (6) months' imprisonment, or both.

History. Acts 1971, No. 433, ch. 7, § 2;
A.S.A. 1947, § 59-602.

Publisher's Notes. Acts 1971, No. 433, § 1 provided: "It is hereby found and determined by the General Assembly that the laws relating to the State Hospital, mental health, and mentally ill persons have been enacted piecemeal over a period of many years and that a great number of these laws are duplicating, conflicting, outmoded, and in urgent need of clarification and codification. It is the purpose and intent of the General Assembly in enacting this Act to clarify, update, and codify

the various laws of the State relating to the State Hospital, mental health, and mentally ill persons."

Acts 1971, No. 433, ch. 10, § 1, provided: "It is the specific intent of the codification of the mental health laws contained in this Act to only effect those laws pertaining to mental health. Nothing in this Act shall be deemed to repeal or modify the provisions of Act 411 of 1955. No other laws shall be affected in any manner, nor shall the inclusion of such laws within this code in any way repeal or affect those laws as they otherwise apply."

20-48-103. Purpose — Use of certain funds.

It is the specific recommendation of the General Assembly that the Division of Developmental Disabilities Services utilize Title XIX, social services block grant, and state grants-in-aid funds available to community programs to seek to achieve the following goals:

(1) Providing for operation of community-based residential programs which the state agency encouraged the community programs to build with nonstate funds;

(2) Determination by the division of reasonable costs for the services provided by community-based programs with consideration of regional expense variations and funding so that the state shall provide a minimum of ninety percent (90%) of the reasonable costs, with the community-based program responsible for no more than ten percent (10%) of the costs; and

(3) That the state not reduce reasonable cost funding of community-based programs; or require reimbursement from community-based programs if the program matches at a rate of at least ten percent (10%) of the funding provided by the division.

History. Acts 1985, No. 777, § 18; this section, is Title XIX of the federal 1989 (1st Ex. Sess.), No. 246, § 16. Social Security Act, codified as 42 U.S.C.

U.S. Code. Title XIX, referred to in § 1396 et seq.

20-48-104. Intermediate Care Facility for Mentally Retarded program — Administration.

(a) The operation of the community-based Intermediate Care Facility for Mentally Retarded program will be subject to the oversight of a five-member committee comprised of three (3) members of the House of Representatives to be appointed by the Speaker of the House of Representatives and two (2) members of the Senate to be appointed by the President Pro Tempore of the Senate.

(b) The committee shall provide oversight for the operation of the small intermediate care facility for the mentally retarded program and make recommendations, within the appropriate federal regulations and guidelines, to the Division of Developmental Disabilities Services and the Office of Long-Term Care to establish and clarify the mission, goals, levels of services, and scope of the program and to provide consistency in state regulations, guidelines, standards, and policies.

(c) The committee shall also make recommendations for adequate funding to ensure the fiscal integrity of the program to allow it to be operated pursuant to the state and federal regulations, guidelines, standards, and policies.

History. Acts 1991, No. 922, § 20; 1991, No. 1129, § 26.

A.C.R.C. Notes. References to “this chapter” in subchapters 1-5 may not apply to this section, which was enacted subsequently.

Publisher’s Notes. Acts 1991, No. 922, § 20 and No. 1129, § 26 are also codified as § 20-10-233.

20-48-105. Community-based service providers — Extension or expansion of services.

(a)(1) In the event that existing services now funded from state or federal funds are extended to unserved or underserved areas of the state or in the event that new services are made available to be funded from state or federal funds, the existing nonprofit community programs licensed by the Division of Developmental Disabilities Services shall be granted an opportunity to make application to expand their service base to unserved or underserved areas or shall be granted an opportunity to make application to offer new services in their existing service area.

(2) In areas in which the division determines that state or federal funding for new or expanded services is to be available, it shall provide notice of its intent to provide the services to existing providers in the area and to the general public.

(3) Before licensing new service providers in an area, the division shall determine in writing that existing service providers are not qualified or are unable or unwilling to extend services to unserved or underserved areas or to provide new or expanded services.

(4) Nothing in this section shall restrict the division's discretion to award new or expanded services to the existing community-based service providers making application pursuant to this section.

(b) The intent of this section is to avoid unnecessary duplication of costs and services in the extension or expansion of services.

(c) Nonprofit community programs licensed by the division are quasi-governmental instrumentalities of the state which provide support and services to individuals who have a developmental disability or delay who would otherwise require support and services in facilities owned and operated by the State of Arkansas.

History. Acts 1997, No. 1360, § 123.

A.C.R.C. Notes. References to "this chapter" in subchapters 1 - 5 may not apply to this section, which was enacted subsequently.

Acts 2001, No. 1639, §§ 10 and 13, provided: "Section 10. DEVELOPMENTAL DISABILITIES — GRANTS TO COMMUNITY BASED PROVIDERS. Funds allocated under the appropriation for community-based services, for Grants to Community Providers, in the Developmental Disabilities Services — Grants-in-Aid appropriation in this act shall be used only to provide services through private community based services licensed or certified by the Arkansas Division of Developmental Disabilities Services (DDS). Non-profit community-based programs licensed by the Division of Developmental Disabilities Services are quasi-governmental instrumentalities of the state

which provide supports and services to individuals who have a developmental disability or delay, who would otherwise require supports and services through state-operated programs and facilities owned by the State of Arkansas. When DDS licensed providers are involved in delivering services which are Medicaid reimbursable, they must enroll as a provider with the Arkansas Medicaid Program and must bill the Arkansas Medicaid Program for all covered services for eligible individuals.

"Services which are covered by the Arkansas State Medicaid Program or under the Alternative Community Services Waiver Program (ACS) will be utilized to the maximum extent possible for any individual who is eligible for Medicaid coverage. It is the intent of this section that DDS, as a general policy, maximize the

use of Medicaid funding available for appropriate services.

"The State shall require each provider funded from this Appropriation for community based services, including funding from the Grants/Patient Services Line, in the Developmental Disabilities Services—Operations appropriation, the Early Intervention Line, in the Developmental Disabilities Services—Operations appropriation, or from the Grants to Community Providers Line, in the Developmental Disabilities Services—Grants-in-Aid appropriation, to screen each individual to whom services are provided for a determination of eligibility or ineligibility for Medicaid coverage within thirty days of the first date that services are provided. It is the intent of this section to insure that wherever possible and appropriate, Medicaid funds are utilized for covered or waived services to individuals who are eligible for coverage under the Arkansas Medicaid Program or the ACS Waiver.

"Nothing in this Act shall prevent the Division or any provider from extending emergency services when appropriate measures have been taken in a timely manner to secure Medicaid eligibility.

"In the event that components of community-based services now funded from state and/or federal funds are extended to unserved or underserved areas of the state, or in the event that new services categories/codes are made available, to be funded from state and/or federal funds the existing non-profit community programs licensed by the Division of Developmental Disabilities Services shall be granted an opportunity to make application to expand their service base to unserved or underserved areas or shall be granted an opportunity to make application to offer new services that the State intends to offer. When the Division of Developmental Disabilities Services determines that state and/or federal funding for new or expanded services are to be available, it shall develop a Request for Proposal (RFP) process which includes a provision

to provide notice of its intent to existing providers and to the general public. Nothing in this Act shall restrict the Division's discretion to award new or expanded services to the existing community based service providers making application for the same pursuant to this section. The intent of this section is to avoid unnecessary duplication of administrative costs and services in the extension or expansion of services.

"The provisions of this section shall be in effect only from July 1, 2001 through June 30, 2003."

"Section 13. GRANTS IN AID-CONDITIONS FOR RECEIVING FUNDS. Private nonprofit community based programs licensed by the Department of Human Services, Developmental Disabilities Services, are eligible to receive funds appropriated for Grants to Community Providers in the Developmental Disabilities Services—Grants-in-Aid appropriation of this Act, and as a condition of receiving such funds they shall:

"1. Meet minimum standards of performance in the delivery of services to people with disabilities as defined by the Department of Human Services, Developmental Disabilities Services.

"2. Supply statistical and financial data to the Department of Human Services, Developmental Disabilities Services.

"3. Establish and maintain a sound financial management system in accordance with guidelines as set forth by the Department of Human Services.

"4. Establish and maintain community support programs designed to provide coordinated care and treatment to ensure ongoing involvement and individualized services for persons with disabilities. Every community support program shall provide services for persons with disabilities who reside within the respective area of the program.

"The provisions of this section shall be in effect only from July 1, 2001 through June 30, 2003."

SUBCHAPTER 2 — ARKANSAS MENTAL RETARDATION ACT

SECTION.

20-48-201. Title.

20-48-202. Definitions.

20-48-203. Board of Developmental Dis-

SECTION.

abilities Services — Creation — Members.

20-48-204. Board of Developmental Dis-

SECTION.

- abilities Services — Officers — Proceedings.
- 20-48-205. Board of Developmental Disabilities Services — Powers and duties.
- 20-48-206. Board of Developmental Disabilities Services — Human development centers — Powers and duties — Admission.
- 20-48-207. Board of Developmental Disabilities Services — Contracts for provision of services.
- 20-48-208. Board of Developmental Dis-

SECTION.

- abilities Services — License for facilities and institutions required.
- 20-48-209. Board of Developmental Disabilities Services — Planning and implementation.
- 20-48-210. Deputy Director of the Division of Developmental Disabilities Services.
- 20-48-211. Board of Developmental Disabilities Services — Community centers.
- 20-48-212. Amount requested for Arkansas Special Olympics, Inc.

Cross References. Department of Human Services, operation and control of mental retardation facilities, § 25-10-104.

Psychiatric residential treatment facilities, licensing, standards, § 20-46-401 et seq.

Effective Dates. Acts 1969, No. 265, § 14: July 1, 1969 with implementation dependent on availability of funds.

Acts 1981, No. 106, § 3: July 1, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that there are a large number of mentally retarded persons in this State; that the present laws pertaining to licensing of facilities for these persons are deficient and that there is an immediate need that this deficiency be corrected. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall take effect and be enforced from and after July 1, 1981."

Acts 1981, No. 774, § 26: July 1, 1981. Emergency clause provided: "It is hereby found and determined by the Seventy-Third General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1981 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1981 could work irreparable harm upon the proper administration and providing of essential governmental programs.

Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1981."

Acts 1983, No. 779, § 23: July 1, 1983. Emergency clause provided: "It is hereby found and determined by the Seventy-Fourth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1983 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1983 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1983."

Acts 1989 (1st Ex. Sess.), No. 246, § 26: July 1, 1989. Emergency clause provided: "It is hereby found and determined by the Seventy-Seventh General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1989 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an

extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1989 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1989."

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for

board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor [sic], it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

RESEARCH REFERENCES

UALR L.J. Boyd, Symposium on Development Disabilities and the Law — The

Aftermath of the DD Act: Is There Life After Pennhurst? 4 UALR L.J. 448.

20-48-201. Title.

This subchapter shall be known and may be cited as the "Arkansas Mental Retardation Act".

History. Acts 1969, No. 265, § 1; A.S.A. 1947, § 59-1001.

20-48-202. Definitions.

As used in this subchapter, unless the context otherwise requires:

- (1) "Board" means the Board of Developmental Disabilities Services;
- (2) "Center" means a human development center;
- (3) "Division" means the Division of Developmental Disabilities Services in the Department of Human Services or the appropriate division as determined by the Director of the Department of Human Services;
- (4) "Director" means the Director of the Department of Human Services;
- (5) "Superintendent" means the chief administrative officer assigned full time to a center;
- (6) "Retarded" or "mentally retarded" or "retarded individual" means:
 - (A) A person with a mental deficit requiring him or her to have special evaluation, treatment, care, education, training, supervision, or control in his or her home or community, or in a state institution for the mentally retarded; or
 - (B) A functionally retarded person who may not exhibit an intellectual deficit on standard psychological tests, but who, because of

other handicaps, functions as a retarded person. Not included is a person whose primary problem is mental illness, emotional disturbance, physical handicap, or sensory defect;

(7) "Individual" means a person without regard to chronological age;

(8) "Mental retardation services" or "services" means all services pertaining to and incidental to the prevention, detection, diagnosis, evaluation, treatment, care, custody, education, training, rehabilitation, or supervision of retarded individuals;

(9) "Region" means a geographical area defined by the division, usually consisting of all or parts of two (2) or more counties, which is created to provide services for retarded individuals when the services cannot be provided feasibly or practically at the local level;

(10) "Locality" means a geographical area defined by the division usually consisting of a municipality or county but not excluding other areas within easy commuting distance;

(11) "Community" means either region or locality;

(12) "Coordinate" means to bring resources to bear in appropriate sequence and relationship to provide the proper services for retarded individuals. "Coordinate" implies a working relationship with, but not administrative authority over, public agencies providing mental retardation services;

(13) "Public agencies" means all agencies, departments, boards, institutions, commissions, officers, officials, political subdivisions and agencies thereof, and school districts of this state; and

(14) "Private organizations" means organizations, persons, firms, individuals, corporations, or associations.

History. Acts 1969, No. 265, § 2;
A.S.A. 1947, § 59-1002.

20-48-203. Board of Developmental Disabilities Services — Creation — Members.

(a)(1) The Board of Developmental Disabilities Services shall consist of seven (7) members, at least one (1) of whom shall be a woman, who shall be citizens and residents of the State of Arkansas and more than twenty-five (25) years of age.

(2) One (1) of the members shall be a resident of each of the six (6) former congressional districts established by Acts 1951, No. 297 [repealed].

(3) The seventh shall be a member at large.

(b) Upon completion of the term of each member, a successor shall be appointed for a term of seven (7) years.

(c) Appointment to fill a vacancy arising other than by expiration of a term of office shall be for the unexpired portion thereof.

(d) Appointment shall be made by the Governor with the advice and consent of the Senate.

(e) The board shall serve without compensation, except that each board member may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

History. Acts 1969, No. 265, § 4; A.S.A. 1947, § 59-1004; Acts 1997, No. 250, § 199.

Publisher's Notes. Acts 1969, No. 265, § 3, redesignated the Arkansas Children's Colony Board as the Arkansas Board of Mental Retardation.

Acts 1981, No. 513, § 2, subsequently redesignated the board as the Board of

Developmental Disabilities Services. It further provided, in part, that the name of the Division of Mental Retardation-Developmental Disabilities Services (MR-DDS) should be changed to Developmental Disabilities Services (DDS).

Amendments. The 1997 amendment rewrote (e).

CASE NOTES

Habeas Corpus.

Habeas corpus action to produce in court a child from the Arkansas Children's Colony (now human development centers) should not have been brought against the State Department of Public Welfare (now Department of Human Services) or the

members of the Board of Mental Retardation (now Board of Developmental Disabilities Services) but against the superintendent of the Arkansas Children's Colony. *State Dep't of Pub. Welfare v. Lipe*, 257 Ark. 1015, 521 S.W.2d 526 (1975).

20-48-204. Board of Developmental Disabilities Services — Officers — Proceedings.

(a) The Board of Developmental Disabilities Services shall annually elect from its membership a chair and vice-chair, each of whom shall hold office until his or her successor shall be chosen. The chair shall preside at meetings of the board, and in his or her absence, the vice chair shall preside.

(b) The board is authorized to designate the commissioner or some employee of the Division of Developmental Disabilities Services to serve as disbursing officer of all funds of the division.

(c) The board shall meet at least one (1) time each three (3) months and at such other times as the chairman may deem advisable.

(d) The board shall report biennially to the Governor and General Assembly.

(e) The affirmative vote of four (4) members of the board shall be necessary to take any board action.

History. Acts 1969, No. 265, § 5; A.S.A. 1947, § 59-1005.

20-48-205. Board of Developmental Disabilities Services — Powers and duties.

(a) The Board of Developmental Disabilities Services:

(1) Shall have charge of the properties used for the purposes of the human development centers;

(2) Shall exercise supervision over the appointment, performance of duties which includes such matters as off-premises assignments for

educational or training purposes, removal of all employees, and the fixing of their compensation;

(3) Shall exercise supervision over expenditures of the centers;

(4) May accept and hold in trust real, personal, or mixed property received by grant, gift, will, or otherwise;

(5) May make purchases of land or receive grants or gifts of land and take deeds therefor in the name of the State of Arkansas;

(6) May accept grants or gifts of money from any source whatever and use the money for any of its powers and purposes; and

(7) May take all action and execute all documents necessary or desirable to carry out its powers and purposes.

(b) The board may make such regulations respecting the care, custody, training, and discipline of retarded individuals in the centers or receiving mental retardation services and respecting the management of the centers and their affairs as it may deem necessary or desirable to the proper performance of its powers and purposes.

(c) The board is prohibited from promulgating any rule or regulation that would set the salary of any employee at the local level unless specifically required to do so by the federal government.

History. Acts 1969, No. 265, § 5; 1981, No. 774, § 18; A.S.A. 1947, §§ 59-1005, 59-1005.1.

20-48-206. Board of Developmental Disabilities Services — Human development centers — Powers and duties — Admission.

(a) With regard to the establishing and operating of the human development centers, the Board of Developmental Disabilities Services, in addition to the authorities, rights, and duties granted by this subchapter, shall continue to have all of its authorities, rights, and duties granted by existing law, which shall include, without limitation, the applicable provisions of §§ 20-48-401 et seq. and 20-48-501 et seq., save only those instances where there are express inconsistencies in which event the provisions of this subchapter shall control.

(b)(1) In this regard, admissions to the institutional facilities of the centers shall be on the basis of a determination by the board that:

(A) The individual involved is mentally retarded;

(B) His parent or guardian has resided in the state not less than three (3) years prior to the date of the filing of the petition for his or her admission, or the individual involved is dependent and a public charge or ward of the state or a political subdivision thereof;

(C) The welfare of the individual involved requires the special care, training, or education provided by institutional facilities of the center; and

(D) The board has adequate funds and institutional facilities available for the care, training, or education of the individual.

(2) Also, the determination of whether an individual is mentally retarded shall be made after there has been an investigation which

shall include an examination by an evaluation team appointed by the board. The team shall be composed of two (2) or more physicians, psychiatrists, psychologists, or other persons found by the board to be professionally qualified on the basis of training and experience in mental retardation services to make a determination as to whether the individual involved is mentally retarded.

History. Acts 1969, No. 265, § 11; A.S.A. 1947, § 59-1011.

Publisher's Notes. Acts 1985, No. 348, § 6, provided that, effective July 1, 1985, the powers and duties of the Division of Developmental Disabilities Services concerning community programs and services for mental retardation or developmental disabilities, regulation of private mental retardation and developmental disabilities services, etc., other than operation of the institutional services of the human development centers, should be performed by the Department of Human Services

through any divisions, offices, etc. as determined by the director of the department. It further provided that powers and duties of the Division of Developmental Disabilities Services with respect to the operation of human development centers and their institutional programs should be performed by the Board of Developmental Disabilities Services to be located and coordinated within the Department of Human Services through any divisions, offices, etc. as designated by the director. See § 25-10-104 and notes thereto.

20-48-207. Board of Developmental Disabilities Services — Contracts for provision of services.

(a) If and to the extent necessary to accomplish the intended purpose of this subchapter to make available the broadest and most effective provision of mental retardation services to those in need of the services, the Board of Developmental Disabilities Services is authorized to contract for the providing of mental retardation services by other public agencies or private organizations.

(b) In this regard, the board is authorized to promulgate regulations and fix standards necessary to properly ensure that such mental retardation services are furnished in a proper and reasonable manner and on an economical basis.

History. Acts 1969, No. 265, § 10; A.S.A. 1947, § 59-1010.

20-48-208. Board of Developmental Disabilities Services — License for facilities and institutions required.

(a) The Board of Developmental Disabilities Services shall regulate the providing of mental retardation services by private organizations and public agencies. The board shall promulgate regulations covering the issuance, suspension, and revocation of licenses and fixing the standards for construction, reconstruction, maintenance, and operation of institutions and facilities, or parts thereof, operated primarily for the providing of developmental disabilities services, unless the facilities or institutions in their entirety are licensed by the Office of Long-Term Care.

(b) No public agency or private organization shall operate any institution or facility for the provision of mental retardation services unless it has a license in effect.

(c) The board shall not deny a license or suspend or revoke a license unless the applicant or licensee has notice and an opportunity for a hearing. The hearing and proceedings incidental thereto shall be governed by the provisions of the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(d) By appropriate proceeding in the Circuit Court of Pulaski County, the board may enjoin the operation of any organization so long as it is not in compliance with the provisions of this subchapter.

History. Acts 1969, No. 265, § 12; 1981, No. 106, § 1; A.S.A. 1947, § 59-1012.

Cross References. Jurisdiction of circuit courts, Ark. Const. Amend. 80, §§ 6, 19.

20-48-209. Board of Developmental Disabilities Services — Planning and implementation.

(a) The Board of Developmental Disabilities Services is designated as the single state agency for the purpose of full participation under any federal act requiring the designation of a single state agency concerning planning, formulation, and implementation of programs, construction and operation of facilities, financing of facilities and programs, or otherwise pertaining to the obtaining and rendition of mental retardation services. However, this shall not be construed as depriving other public agencies of jurisdiction over or the right to plan for and control and operate programs that pertain to mental retardation services but which fall within the primary jurisdiction of other public agencies such as programs administered by the Arkansas School for the Deaf, Arkansas School for the Blind, State Board of Workforce Education and Career Opportunities, State Board of Education, Department of Health, and the Department of Human Services.

(b) The Board of Developmental Disabilities Services is authorized to coordinate the planning and implementation of mental retardation programs and institutional and community activities of all public agencies. However, this shall not be construed as depriving other public agencies of jurisdiction over or the right to plan for and control and operate programs that pertain to mental retardation services but which fall within the primary jurisdiction of other public agencies such as programs administered by the Arkansas School for the Deaf, Arkansas School for the Blind, State Board of Workforce Education and Career Opportunities, State Board of Education, Department of Health, and the Department of Human Services.

(c) Effective planning and coordination is essential to the public interest. In order to achieve this to the fullest extent possible, the Board of Developmental Disabilities Services is authorized to establish and promulgate regulations fixing standards for mental retardation programs and activities and to evaluate mental retardation programs and activities of public agencies.

History. Acts 1969, No. 265, § 8;
A.S.A. 1947, § 59-1008.

20-48-210. Deputy Director of the Division of Developmental Disabilities Services.

(a) There is created the office of the Deputy Director of the Division of Developmental Disabilities Services of the Department of Human Services. The deputy director shall be appointed by and shall serve at the pleasure of the Board of Developmental Disabilities Services.

(b) The deputy director shall be a person of proven administrative ability and professional qualifications, preferably a Ph.D. degree or equivalent, but including at least a master's degree in psychology, education, social service, or other field of study approved by the board and shall have at least five (5) years' experience in mental retardation services.

(c) The deputy director shall be the executive secretary of the board and shall maintain an official set of minutes of all board action.

(d) The deputy director shall be the executive officer of the division and shall operate and manage the division, subject to the control of the board.

(e) The board may delegate to the deputy director any powers of the board upon such terms and for such duration as the board shall specify.

History. Acts 1969, No. 265, § 7;
A.S.A. 1947, § 59-1007.

20-48-211. Board of Developmental Disabilities Services — Community centers.

(a) The Board of Developmental Disabilities Services is authorized to take the necessary action to establish and maintain, or to cause to be established and maintained, community centers, alone or together with public agencies or private organizations, at localities determined to be appropriate for the better providing of or for assistance in the providing of mental retardation services for any region or locality in the state. Community centers may be organized on a formal or informal basis as shall be determined to best suit the circumstances at any particular region or locality, including without limitation organization under the provisions of the Arkansas Nonprofit Corporation Act, § 4-28-201 et seq.

(b) Within the limits of available funds, a program for furnishing mental retardation services shall be developed for each community center which may include a state grants-in-aid program. In this regard, the board is authorized to promulgate regulations covering the establishment and operation of community centers, the formulation and implementation of mental retardation programs and activities for community centers, and the funding of the programs and activities.

(c) The board is prohibited from promulgating any rule or regulation that would set the salary of any employee of a community-based program unless specifically required to do so by the federal government.

History. Acts 1969, No. 265, § 9; 1983, No. 779, § 19; A.S.A. 1947, §§ 59-1009, 59-1009.1.

Publisher's Notes. Acts 1973, No. 217, provided for the establishment, at Warren in Southeast Arkansas, of a pilot project to be designated as a Comprehen-

sive Mental Retardation-Developmental Disabilities Service Center, providing a broad spectrum of institutional and community services benefiting the mentally retarded and developmentally disabled in the Southeast Arkansas area.

20-48-212. Amount requested for Arkansas Special Olympics, Inc.

The Board of Developmental Disabilities Services shall, when preparing their biennial budget request for submission to the Governor and the Legislative Council, consult with the Arkansas Special Olympics, Inc., concerning the amount which is to be submitted as the request for each year of the forthcoming biennium for a grant to the Arkansas Special Olympics, Inc. The amount as may be determined by the Arkansas Special Olympics, Inc. shall be submitted as the agency request to the Governor and to the Legislative Council.

History. Acts 1989 (1st Ex. Sess.), No. 246, § 17.

SUBCHAPTER 3 — COOPERATIVE AGREEMENTS

SECTION.

20-48-301. Purpose.

20-48-302. Authority to participate.

20-48-303. Terms.

SECTION.

20-48-304. Approval by Attorney General required.

20-48-305. Status of interstate compacts.

20-48-301. Purpose.

It is the purpose of this subchapter to permit the Board of Developmental Disabilities Services, a division of the Department of Human Services, to cooperate with public agencies or private nonprofit organizations of adjoining states to provide services for residents of Arkansas that are mentally retarded or developmentally disabled.

History. Acts 1973, No. 465, § 1; A.S.A. 1947, § 59-1013.

20-48-302. Authority to participate.

(a) Subject to the conditions and limitations contained in this subchapter, the Board of Developmental Disabilities Services may enter into agreements with public agencies, private nonprofit organizations, or combinations thereof from adjoining states for the purpose of performing its responsibility to the residents of Arkansas that are mentally retarded or developmentally disabled.

(b) The agreements may include financial participation, using any funds that are at its disposal, to the extent that similar services would be performed within the state.

History. Acts 1973, No. 465, § 2;
A.S.A. 1947, § 59-1014.

20-48-303. Terms.

Every agreement or contract entered into in accordance with this subchapter shall specify the following:

- (1) Full names and addresses of all parties to the agreement;
- (2) The precise organization, composition, and nature of the legal or administrative entity that will be providing services, together with its powers and limitations and manner of acquiring, holding, and disposing of real and personal property used in the joint or cooperative undertaking;
- (3) A description of the joint or cooperative undertaking that specifies the duties and responsibilities of all parties to the agreement;
- (4) The manner of financing the joint or cooperative undertaking and of establishing and maintaining a budget thereof, or in the case whereby one (1) of the participants agrees to furnish specified services, the financial arrangements therefor;
- (5) The permissible methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon a partial or complete termination; and
- (6) Any other necessary and proper matters.

History. Acts 1973, No. 465, § 3;
A.S.A. 1947, § 59-1015.

20-48-304. Approval by Attorney General required.

(a) At the discretion of the Board of Developmental Disabilities Services, every agreement made pursuant to this subchapter shall be submitted to the Attorney General who shall determine whether the agreement is in proper form and compatible with the laws of this state prior to and as a condition precedent to its entry into force.

(b) The Attorney General shall approve any agreement submitted to him or her hereunder unless he or she shall find that it does not meet the conditions set forth in this subchapter and shall detail in writing addressed to the board and the governing bodies concerned with the agreement the specific respects in which the proposed agreement fails to meet the requirements of law.

(c) Failure to disapprove an agreement submitted pursuant to this subchapter within twenty (20) days of its submission shall constitute approval thereof.

History. Acts 1973, No. 465, § 4;
A.S.A. 1947, § 59-1016.

20-48-305. Status of interstate compacts.

Every agreement or contract entered into pursuant to this subchapter shall have the status of an interstate compact.

History. Acts 1973, No. 465, § 5;
A.S.A. 1947, § 59-1017.

SUBCHAPTER 4 — HUMAN DEVELOPMENT CENTERS GENERALLY

SECTION.

- 20-48-401. Definitions.
- 20-48-402. Penalties.
- 20-48-403. Human development centers
— Creation.
- 20-48-404. Eligibility for admission.
- 20-48-405. Petition for admission.
- 20-48-406. Admission procedures.
- 20-48-407. Order of commitment.
- 20-48-408. Transfer of individuals from
other institutions.
- 20-48-409. Permit to visit.
- 20-48-410. Return of individual.
- 20-48-411. Charges.

SECTION.

- 20-48-412. Discharge.
- 20-48-413. Emotionally disturbed men-
tally retarded individuals.
- 20-48-414. Off-premise training for staff
members.
- 20-48-415. Board of Developmental Dis-
abilities Services — Pow-
ers and duties — Proceed-
ings — Appointment of
superintendent.
- 20-48-416. Designation as state agency
for carrying out federal
mental retardation acts.

Preambles. Acts 1959, No. 352 con-
tained a preamble which read: "Whereas,
Act 6 of 1955 authorizes the Board of the
Arkansas Children's Colony to establish a
system of charges, to be based upon the
ability of a child or its parent or guardian
to pay for maintenance, training and edu-
cation in the Children's Colony; and such
fees when collected are to be deposited in
the State Treasury for the use and benefit
of the Colony;

"Now, therefore..."

Acts 1969, No. 72 contained a preamble
which read: "Whereas, there is currently
no facility in the State designed especially
for the care and treatment of emotionally
disturbed mentally retarded children; and

"Whereas, it is believed that it is most
appropriate that such facility be estab-
lished and operated under the supervision
and direction of the Arkansas Children's
Colony Board;

"Now, therefore..."

Effective Dates. Acts 1955, No. 6,
§ 18: Jan. 25, 1955. Emergency clause
provided: "It is hereby found by the Gen-
eral Assembly of the State of Arkansas
that no facilities exist for the proper train-
ing and care of mentally deficient persons;
that there is a possibility of certain federal

funds being made available for the pur-
pose of constructing suitable facilities for
the training and care of mentally deficient
persons; and, that the immediate passage
of this act is necessary in order that the
mentally retarded persons in the State of
Arkansas might receive proper care. Now,
therefore, an emergency is hereby de-
clared to exist and this act being neces-
sary for the immediate preservation of the
public peace, health and safety, shall take
effect and be in full force from and after its
passage and approval."

Acts 1963, No. 277, § 5: Mar. 18, 1963.
Emergency clause provided: "It is hereby
found and determined by the general as-
sembly that federal funds are available for
assisting institutions for mentally re-
tarded in providing care and facilities for
mentally retarded children; that the Ar-
kansas children's colony presently has a
waiting list of several hundred children
who are desiring admission to the chil-
dren's colony; that additional funds are
necessary before facilities may be pro-
vided and operating expenses may be de-
frayed to accommodate such children; and
that the immediate passage of this act is
necessary to enable the children's colony
to take advantage of available federal

funds and thereby extend this service for the mentally retarded children of this state. Therefore, an emergency is hereby declared to exist and this act being neces-

sary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

CASE NOTES

Habeas Corpus.

In a habeas corpus action for a person detained in the Arkansas Children's Colony (now human development centers) the defendant should have been the superintendent of the Arkansas Children's Colony and not the State Department of Public

Welfare (now Department of Human Services) nor the members of the Board of Mental Retardation (now Board of Developmental Disabilities Services). *State Dep't of Pub. Welfare v. Lipe*, 257 Ark. 1015, 521 S.W.2d 526 (1975).

20-48-401. Definitions.

As used in this subchapter, unless the context otherwise requires:

- (1) "Board" means the Board of Developmental Disabilities Services;
- (2) "Center" means a human development center; and
- (3) "Superintendent" means the superintendent of a human development center.

History. Acts 1955, No. 6, § 1; A.S.A. 1947, § 59-1101.

Publisher's Notes. Acts 1969, No. 265, § 3, redesignated the Arkansas Children's Colony Board as the Arkansas Board of Mental Retardation.

Acts 1981, No. 513, § 2, subsequently redesignated the board as the Board of Developmental Disabilities Services and changed the name of the Division of Mental Retardation-Developmental Disabilities Services (MR-DDS) to Developmental Disabilities Services (DDS).

It further provided that the units of the Arkansas Children's Colony at Alexander, Arkadelphia, Booneville, Conway, and Jonesboro should be known as human development centers and the Developmental Disabilities Services Institution at Warren should continue to be known by that title and that Acts 1981, No. 513, should not affect the purpose behind the creation of the Southeast Arkansas Human Development Center.

20-48-402. Penalties.

Any person who violates the following provisions shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than fifty dollars (\$50.00) nor more than two hundred dollars (\$200) or by imprisonment for not less than six (6) months, or both:

- (1) Under the provisions of this subchapter, knowingly, unlawfully, or improperly causes an individual to be adjudged mentally defective;
- (2) Procures the escape of an individual or knowingly conceals an escaped individual of a human development center; or
- (3) Unlawfully brings any firearm, deadly weapon, or explosive into a center or its grounds or passes any thereof to an individual, employee, or officer of a center.

History. Acts 1955, No. 6, § 16; A.S.A. 1947, § 59-1116.

20-48-403. Human development centers — Creation.

(a) There are created and there shall be maintained institutions for the care, custody, treatment, and training of mentally defective individuals to be known as human development centers.

(b) For the purposes of the institutions, the Board of Developmental Disabilities Services is charged with the care and training of mentally defective individuals.

History. Acts 1955, No. 6, § 2; A.S.A. 1947, § 59-1102.

20-48-404. Eligibility for admission.

An individual may be deemed eligible for admission to a human development center if:

(1) Due to developmental disability, the person is incapable of managing his or her affairs and the person's welfare requires the special care, training, and treatment provided at a center.

(2) The examining physicians provided for in § 20-48-406 shall use standard mental and psychological tests and physical examinations in determining that the individual is developmentally disabled and in need of special training which is provided for in this subchapter.

History. Acts 1955, No. 6, § 3; A.S.A. 1947, § 59-1103; Acts 1999, No. 1437, § 1.

Amendments. The 1999 amendment rewrote this section.

Publisher's Notes. This section may be affected by § 20-48-206.

20-48-405. Petition for admission.

(a) A parent or guardian of a mentally defective individual may file with the Board of Developmental Disabilities Services a verified petition requesting that the individual be admitted to the human development center.

(b) The petition shall include:

(1) The relation of the individual to the petitioner;

(2) The name, age, sex, and residence of the individual;

(3) A statement of the mental and physical condition of the individual;

(4) Whether the individual has any property or means of support;

(5) The name of the person having custody of the individual;

(6) The place where and length of time the individual has resided in the state; and

(7) A statement as to whether the petitioner desires that the individual be admitted voluntarily or by commitment.

(c) In the event the estate of the individual or his or her parents, relative, or guardian is unable to pay for the maintenance, training, and education, the petition shall state this fact.

History. Acts 1955, No. 6, § 4; 1957, No. 349, § 1; A.S.A. 1947, § 59-1104.

20-48-406. Admission procedures.

(a)(1) Upon receipt of the petition, the Board of Developmental Disabilities Services shall make a determination as to whether or not a human development center then has adequate facilities and funds to properly care for, treat, and train the individual. If the board determines that no center currently has adequate facilities and funds, then the individual shall not be admitted to a center. If the board determines that the centers do have adequate facilities and funds to care for, treat, and train the individual and that the proposed admission would not crowd the centers beyond their maximum capacity, it shall cause an investigation to be made on the petition.

(2) The investigation shall include an examination of the individual by two (2) reputable physicians appointed or designated by the board for the purpose of determining the mental status and condition of the individual and whether or not he or she has or is a carrier of a contagious or infectious disease. The investigation may also include one (1) or more examinations of the individual by psychologists, psychiatrists, and physicians designated by the board. If the board determines from the investigation that:

- (A) The statements made in the petition are true and correct;
- (B) The individual is eligible under the provisions of § 20-48-404; and
- (C) The individual neither has nor is a carrier of a contagious or infectious disease.

(b) The board may permit the voluntary admission of the individual to a center for such period of time as the board may deem necessary for the proper care, training, and education of the individual. The admission shall be by action of the board without the necessity of any court procedure.

(c)(1) The board may determine that the individual should be admitted to a center by legal commitment only. In that event, the board shall file the petition for admission with the probate court of the county in which the individual resides. There shall be filed with the court, along with the petition, such of the reports received by the board in the course of its investigation and examination as the board may deem necessary.

(2) The court shall promptly set a time and place for a hearing on the petition.

(3) The court may appoint one (1) or two (2) reputable physicians to examine the individual and report to the court the mental status of the individual and whether he or she is afflicted with or a carrier of a contagious or infectious disease, or it may adopt the report of the physician appointed by the board in the investigation of the individual as provided for in subsection (a) of this section.

(4) Upon the hearing on the petition, the court shall determine whether or not the individual should be committed to a center for care,

treatment, and training and shall enter an appropriate order in accordance with its determination.

History. Acts 1955, No. 6, § 5; 1957, No. 349, § 2; A.S.A. 1947, § 59-1105; Acts 1997, No. 208, § 22.

A.C.R.C. Notes. Acts 1997, No. 208, § 1, codified as § 24-4-408, provided: "LEGISLATIVE INTENT AND PURPOSE. The General Assembly hereby acknowledges that many of the laws relating to individuals with disabilities are antiquated, functionally outmoded, derogatory, ambiguous or are inconsistent with more recently enacted provisions of the law. Consequently, it is the intent of the General Assembly and the purpose of this Act to clarify the relevant chapters of Titles 1, 6, 9, 13, 14, 16, 17, 20, 22, 23, and 27 of the Arkansas Code Annotated of 1987."

The omission of (a)(2)(D) from the version of (a)(2) set out in Acts 1997, No. 208 may have been an engrossing error. Sub-

division (a)(2)(D) read as follows: "(a)(2)(D) The individual is not suffering from psychosis of such nature and extent that a center could not properly and beneficially care for, treat, and train the individual with the facilities and program it then has, then the board may proceed toward admission of the individual to the center in accordance with the provisions of subsection (b) or subsection (c) of this section, whichever the board may deem proper in the particular case, but taking into consideration the request contained in the petition."

Amendments. The 1997 amendment substituted "he has or is" for "he is afflicted with or" in the first sentence of (a)(2); and "individual neither has" for "individual is not afflicted with" in (a)(2)(C); and deleted (a)(2)(D).

20-48-407. Order of commitment.

(a) The order of commitment shall include the name, residence, and date of birth of the individual, the nationality and address, insofar as may be ascertained, of his or her parents, and the amount of his or her estate.

(b) The order of commitment shall be made in duplicate and signed by the judge of the court. One (1) copy shall become a record of the court files, and the other copy shall be mailed by the clerk of the court to the superintendent of the center.

History. Acts 1955, No. 6, § 6; A.S.A. 1947, § 59-1106.

20-48-408. Transfer of individuals from other institutions.

(a) The superintendent of a state institution other than a human development center may report to the examining physicians and request the examination of any individual therein deemed mentally defective.

(b) Upon receipt of the report and request, the examining physicians shall conduct the examination in the county in which the institution having custody of the individual is located and, in the event that it is determined by the examining physicians that the individual is mentally defective and will benefit by the services offered by the center, shall file a petition showing those facts with the court originally committing the individual to the institution.

(c) Upon receipt of the petition, the court may order the individual transferred to a center.

History. Acts 1955, No. 6, § 7; A.S.A. 1947, § 59-1107.

20-48-409. Permit to visit.

(a) The Board of Developmental Disabilities Services may, under such conditions and for such length of time as it may deem advisable, permit an individual to leave a human development center for the purpose of visiting in a private home and may revoke or extend the period of the visit or change the conditions upon which it is granted.

(b) The board shall, prior to the granting of a permit to visit, cause an investigation to be made of the home in which the individual is to visit and such other conditions and circumstances as may affect his or her welfare and behavior.

(c) The board may provide such supervision of an individual leaving the center for the purpose of a visit as it may deem advisable.

(d) An individual receiving a permit to visit shall not be deemed discharged from the center.

History. Acts 1955, No. 6, § 8; A.S.A. 1947, § 59-1108.

20-48-410. Return of individual.

Any officer authorized to serve criminal process shall, upon the written request of the superintendent, return to the human development center or hold in custody an individual who has escaped or who has been temporarily released from the center under a permit to visit.

History. Acts 1955, No. 6, § 10; A.S.A. 1947, § 59-1110.

20-48-411. Charges.

(a)(1) In the case of each petition for admission, the Board of Developmental Disabilities Services shall investigate and determine whether the individual or his or her parents or guardian can pay for the maintenance, training, education, or care of the individual.

(2) The board is authorized to establish a system of charges to be based upon the ability of the individual or his or her parents or guardian to pay for maintenance, training, education, or care and to impose the charges.

(3) However, if the board determines that the individual or his or her parents or guardian is unable to pay for all or part of the maintenance, training, education, or care of the individual, the board may provide all or part without charge.

(3) The board may vary the schedule of charges from time to time as circumstances warrant.

(b)(1) If any individual or his parents or guardian shall fail or refuse to pay the charges so assessed by the board, the board shall have and is granted the authority to institute appropriate legal proceedings in a court of competent jurisdiction for the collection of the charges.

(2) The board is authorized to retain the services of legal counsel and pay a reasonable fee for any services furnished the board.

(c) All fees provided for by subsections (a) and (b) of this section for the benefit of the human development centers shall be deposited in the State Treasury as special revenues and shall be credited to the Developmental Disabilities Services Fund Account.

(d) Subsections (a) and (b) of this section shall be liberally construed. The enumeration of any object, purpose, power, manner, method, and thing shall not be deemed to exclude like or similar objects, purposes, powers, manners, methods, or things.

History. Acts 1955, No. 6, § 11; 1957, 186, §§ 6, 11; A.S.A. 1947, §§ 59-1111, No. 349, § 4; 1959, No. 352, § 1; 1963, No. 59-1112, 59-1126.

20-48-412. Discharge.

(a) Any individual who has entered a human development center by voluntary admission in accordance with the provisions of § 20-48-406(b) may be withdrawn from the center at any time upon the application of the parent or guardian who has legal custody of the individual, provided the parent or guardian shall have first given to the Board of Developmental Disabilities Services thirty (30) days' notice in writing of his or her intention to withdraw the individual from the center.

(b) An individual committed by order of the probate court to a center or transferred from another institution shall not be discharged therefrom until, in the judgment of the board and the superintendent, his or her condition justifies the discharge. Whenever the board in its sole judgment determines that the individual should be discharged, the discharge shall be by order of the board, and the board shall certify the discharge to the probate court of the county making the order of commitment.

History. Acts 1955, No. 6, § 9; 1957, No. 349, § 3; A.S.A. 1947, § 59-1109.

20-48-413. Emotionally disturbed mentally retarded individuals.

(a) The Board of Developmental Disabilities Services is authorized to establish and operate an appropriate facility at such location in the state as it shall determine for the care and treatment of emotionally disturbed mentally retarded individuals, and persons with disorganized behavior, including hyperkinetic, hyperactive, or aggressive behaviors who, because of their problem, function as retarded individuals.

(b) The board is authorized to make such rules and regulations regarding eligibility for admission to the facility, care and treatment of the individuals, discharge from and return to the facility, charges for the maintenance, care, and training of individuals admitted to the facility, and such other matters as the board shall deem necessary to carry out the most effective program for the care and treatment of emotionally disturbed mentally retarded individuals of this state.

History. Acts 1969, No. 72, §§ 1, 2; A.S.A. 1947, §§ 59-1132, 59-1133.

Publisher's Notes. Acts 1969, No. 72, § 2 provided, in part, that until the board provides otherwise, the laws and regulations applicable to human development

centers with respect to the matters enumerated in subsection (b) of this section shall be equally applicable to the operation of the facility provided for in this section.

20-48-414. Off-premise training for staff members.

(a) The Board of Developmental Disabilities Services is authorized to extend to selected staff members of the human development centers off-premise assignments for educational or training purposes. In determining whether to make the off-premise assignments, the board shall be guided by the recommendations of the center superintendent based on such considerations as the requirements of the center for qualified personnel, the availability of qualified persons in specialized fields, the availability of funds, and other factors contributing to staff development.

(b)(1) Before granting any off-premise assignment for educational or training purposes, the board shall enter into an agreement with the staff member which shall require the staff member, upon completion of the educational or training program, to return to the human development center in the same or comparable position for such period of time as may be agreed upon by the board and the staff member.

(2) Any staff member who fails to return to the center pursuant to the agreement shall be liable for any compensation paid to the staff member by the center during the period for which he or she was granted the off-premise assignment for educational or training purposes.

(3) The agreement entered into by the board and the staff member shall provide that the venue of any action brought to recover any funds paid the staff member under the agreement shall be in Pulaski County.

History. Acts 1967, No. 443, §§ 1, 2; A.S.A. 1947, §§ 59-1130, 59-1131.

20-48-415. Board of Developmental Disabilities Services — Powers and duties — Proceedings — Appointment of superintendent.

(a) The government and control of the human development centers shall be vested in the Board of Developmental Disabilities Services.

(b) The board:

(1) Shall have charge of the property of the state which may be used for the purposes of the centers;

(2) Shall make and execute its bylaws;

(3) Shall appoint and remove its officers, attendants, and employees and fix their compensation;

(4) Shall exercise a strict supervision of the centers' expenditures; and

(5) May receive and hold in trust property given, by will or otherwise, for the benefit of persons committed to the centers and may make purchases of land and take deeds therefor in the name of the State of Arkansas.

(c)(1) It shall appoint superintendents who shall not be one (1) of its number. The superintendents shall be reputable trained administrators of institutions engaged in the care, custody, treatment, and training of children and youth, with at least five (5) years' experience as the superintendent or administrative assistant of such an institution.

(2) The board shall fix the superintendents' salary and prescribe their duties.

(d) It shall annually elect from its membership a chairman and vice chair, each of whom shall hold office until his or her successor is chosen.

(1) The chair shall preside at meetings of the board, and in his or her absence, the vice chair shall preside.

(2) A superintendent shall serve as executive secretary to the board and shall maintain an official set of minutes of all votes and actions of the board. These minutes shall be signed by the superintendent as executive secretary and by the chair of the board.

(3) The board is authorized to designate the superintendent, or some other competent employee or official of the center, to serve as disbursing officer of all funds of the center.

(e) The board shall meet at least once each three (3) months and at such other times as the chair may deem advisable.

(f) The superintendent of each center shall annually, or more often if required, present to the board for himself or herself and his or her staff a written report of the management of the center setting forth in detail all receipts and disbursements and general conditions of the affairs of the center.

(g) The board shall report biennially to the Governor and General Assembly, accompanying its report with the annual report of the superintendent.

(h) A majority vote of the entire membership of the board shall be necessary to take any board action.

(i) The board shall have the specific authority to accept gifts or grants of lands in the name of the State of Arkansas and to accept gifts or grants of money from any source whatever. The board shall use all gifts or grants, with the exception of funds appropriated by the General Assembly, for the purpose of construction of buildings, for the operation of the centers, for the purchase of equipment and facilities, for the employment of teachers and necessary personnel, or for any other purpose deemed expedient by the board.

(j) The board may make such rules and regulations respecting the care, custody, training, and discipline of individuals admitted to the centers and the management thereof and of its affairs as it may deem for the best interest of the centers and the State of Arkansas.

History. Acts 1955, No. 6, §§ 13, 14; A.S.A. 1947, §§ 59-1113, 59-1114.

Publisher's Notes. Acts 1985, No. 348, § 6, provided that, effective July 1, 1985, the powers and duties of the Division of Developmental Disabilities Services concerning community programs and services for mental retardation or developmental disabilities, regulation of private mental retardation and developmental disabilities services, etc., other than operation of the institutional services of the human development centers, should be performed by the Department of Human Services through any divisions, offices, etc. as de-

termined by the director of the department. It further provided that any powers and duties of the Division of Developmental Disabilities Services with respect to the operation of human development centers and their institutional programs should be performed by the Board of Developmental Disabilities Services to be located and coordinated within the Department of Human Services through any divisions, offices, etc. as designated by the director. See § 25-10-104 and notes thereto.

This section may be affected by §§ 20-48-205 and 20-48-206.

CASE NOTES

Habeas Corpus.

In a habeas corpus action for a person detained in the Arkansas Children's Colony (now human development centers) the defendant should have been the superintendent of the Arkansas Children's Colony and not the State Department of Public

Welfare (now Department of Human Services) nor the members of the Board of Mental Retardation (now Board of Developmental Disabilities Services). State Dep't of Pub. Welfare v. Lipe, 257 Ark. 1015, 521 S.W.2d 526 (1975).

20-48-416. Designation as state agency for carrying out federal mental retardation acts.

(a) The Board of Developmental Disabilities Services is designated as the single state agency for carrying out the purposes of any act of Congress pertaining to mental retardation.

(b) The board is authorized to take all action of every nature whatever necessary or desirable in complying with the requirements of any federal act and accomplishing the purposes thereof, including, without limitation:

(1) The receiving, handling, and disbursing of grants and funds appropriated by any federal act;

(2) The making of provisions to assure full consideration of all aspects of services essential to planning for comprehensive state and community action to combat mental retardation, including services in the fields of education, employment, rehabilitation, welfare, health, and the law, and services provided through community programs for and institutions for the mentally retarded;

(3) The preparing and submitting of plans for expenditure of such grants and funds and providing the assurance required by any federal act as to carrying out the purposes of any federal act;

(4) The preparing and submitting of reports of the activities of the center in carrying out the purposes of any federal act in such form and containing such information as may be required by any federal act and keeping such records and affording access thereto necessary to assure correctness and verification of such reports as may be required by any federal act;

(5) The providing for such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement of and accounting for grants and funds paid to the center in accordance with the requirements of any federal act; and

(6) The doing of all things and taking of all action to carry out any plans for expenditures of the grants and funds in accordance with and for the accomplishment of the purposes of any federal act.

(c)(1) This section shall be liberally construed.

(2) The enumeration of any object, purpose, power, manner, method, and thing shall not be deemed to exclude like or similar objects, purposes, powers, manners, methods, or things.

(3) This section shall be construed as being supplementary to any existing purposes and powers authorized to be accomplished by the human development centers or the board.

History. Acts 1963, No. 277, §§ 1-3; A.S.A. 1947, §§ 59-1127 — 59-1129.

SUBCHAPTER 5 — HUMAN DEVELOPMENT CENTERS — PROPERTY AND FINANCES

- SECTION.
- 20-48-501. Liberal construction — Act supplemental.
 - 20-48-502. Authority to acquire properties.
 - 20-48-503. Authority to issue revenue bonds and use available funds and revenues.
 - 20-48-504. Procedure for issuing revenue bonds.
 - 20-48-505. Liability of Board of Developmental Disabilities Services for bonds.
 - 20-48-506. Nonliability of board members for bonds — Exception.

- SECTION.
- 20-48-507. Revenue bonds secured by pledge of gross charges and surplus charges.
 - 20-48-508. Issuance of refunding bonds.
 - 20-48-509. Taxation of bonds.
 - 20-48-510. Municipalities, boards, commissions, etc. authorized to invest in bonds.
 - 20-48-511. Developmental disabilities — Timber sales proceeds — Capital improvements and equipment.

Effective Dates. Acts 1970 (Ex. Sess.), No. 56, § 5: Mar. 13, 1970. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the financing of the public improvements to which this Act pertains is not feasible under existing maximum interest rate limitations, that

the accomplishment of these public improvements is essential to the continued development of this State and the continued improvement of the economic conditions of her people, and that these public improvements can be accomplished only by the immediate effect of this Act. Therefore, an emergency is declared to exist and

this Act, being necessary for the preservation of the public peace, health and safety, shall be in effect from and after its passage and approval."

Acts 1975, No. 225, § 26: became law without Governor's signature, Feb. 19, 1975. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the state of Arkansas that the financing of the public improvements to which this Act pertains is not feasible under existing maximum interest rate limitations, that the accomplishment of these public improvements is essential to the continued development of this State and the continued improvement of the economic conditions of her people, and that these public improvements can be accomplished only by the immediate effect of this Act. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in effect from and after its passage and approval."

Acts 1981, No. 425, § 54: Mar. 11, 1981. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the financing of the public improvements to which this Act pertains is not feasible under existing maximum interest rate limitations, that the accomplishment of these public improvements is essential

to the continued development of this State and the continued improvement of the economic conditions of her people, and that these public improvements can be accomplished only by the immediate effect of this Act. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in effect from and after its passage and approval."

Acts 1999, No. 1537, § 140: July 1, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1999 is essential to the operation of the agency for which the appropriations in this Act are provided and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1999 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1999."

20-48-501. Liberal construction — Act supplemental.

(a) This subchapter shall be liberally construed.

(b) The enumeration of any object, purpose, power, manner, method, and thing shall not be deemed to exclude like or similar objects, purposes, powers, manners, methods, or things.

(c) Furthermore, this subchapter shall be construed as being supplementary to any existing purposes and powers authorized to be accomplished and performed by the Board of Developmental Disabilities Services and by the human development centers.

History. Acts 1963, No. 186, § 11;
A.S.A. 1947, § 59-1126.

20-48-502. Authority to acquire properties.

(a) The Board of Developmental Disabilities Services, established and existing pursuant to the provisions of § 70-48-401 et seq., is authorized to own, acquire, construct, reconstruct, extend, equip, improve, maintain, operate, lease, contract concerning, or otherwise deal

in and with any lands, improvements, buildings, furniture, furnishings, machinery, and personal property of any and every nature whatever, sometimes called “properties”, that can be used by the board for the accomplishment of, or in connection with the accomplishment of, any of the purposes and powers of the board and of the human development centers as specified by and set forth in § 70-48-401 et seq. or as specified by this subchapter or by any constitutional provision or act.

(b) The properties may be located on or near the present operation of the Human Development Center at Conway, Arkansas, or at any other location in the State of Arkansas where the board shall undertake operations to discharge its purposes and powers.

History. Acts 1963, No. 186, § 1;
A.S.A. 1947, § 59-1117.

20-48-503. Authority to issue revenue bonds and use available funds and revenues.

(a) The Board of Developmental Disabilities Services is authorized to use any available revenues for the accomplishment of the purposes specified and referred to in § 20-48-502 and is authorized to issue revenue bonds and to use the proceeds thereof for the accomplishment of the purposes, either alone or together with other available funds and revenues.

(b) The amount of bonds issued shall be sufficient to pay all costs and sums required and necessarily incidental to the accomplishment of the specified purposes, all costs incurred in connection with the issuance of the bonds, the amount necessary to cover debt service on the bonds until revenues are available in a sufficient amount therefor, and the amount necessary for a debt service reserve, if deemed desirable.

History. Acts 1963, No. 186, § 2; bonds pursuant to Acts 1963, No. 186, § 2,
A.S.A. 1947, § 59-1118. was transferred to the Arkansas Develop-

Publisher’s Notes. Acts 1985, No. 1062, § 24.00, provided in part that the authority of the Board of Developmental Disabilities Services to issue revenue means the authority.

20-48-504. Procedure for issuing revenue bonds.

(a) Revenue bonds may be issued from time to time for any of the purposes set forth in § 20-48-502.

(1) Each issue shall be authorized by resolution of the Board of Developmental Disabilities Services.

(2)(A) The bonds of each issue shall be coupon bonds payable to bearer but may be made subject to registration as to principal only, except as otherwise provided in subsection (e) of this section, may be issued in one (1) or more series, may bear such date or dates, may mature at such time or times, may bear interest at such rate or rates, may be in such form, may be executed in such manner, may be payable in such medium of payment, at such place or places, may be

subject to such terms of redemption, and may contain such terms, covenants, and conditions as the resolution may provide.

(B) The resolution may contain terms, covenants, and conditions, including, without limitation, those pertaining to the custody and application of the proceeds of the bonds, the collection and disposition of revenues, the maintenance and investment of various funds and reserves, the nature and extent of the security, the rights, duties, and obligations of the board and the trustee for the holders or registered owners of the bonds, and the rights of the holders or registered owners of the bonds.

(3) Priority as to lien on revenues between and among successive issues may be controlled by the resolution authorizing the issuance of each issue of bonds.

(4) The bonds shall have all the qualities of negotiable instruments under the negotiable instrument laws of this state.

(b) Each resolution authorizing the issuance of any issue of bonds may provide for the execution by the board of an indenture which defines the rights of the bondholders and provides for the appointment of a trustee for the bondholders. The indenture may control priority as to lien on revenues between successive issues and may contain any other terms, covenants, and conditions that are deemed desirable, including, without limitation, those pertaining to the custody and application of the proceeds of the bonds, the collection and disposition of revenues, the maintenance of various funds and reserves, the nature and extent of the security, the rights, duties, and obligations of the board and the trustee for the holders or registered owners of the bonds, and the rights of the holders or registered owners of the bonds.

(c) The bonds may be sold at public or private sale for such price, including, without limitation, sale at a discount, and in such manner as the board may determine by resolution.

(d) The bonds shall be executed by the chairman and the executive secretary of the board and in case any of the officers whose signatures appear on the bonds or coupons shall cease to be such officers before the delivery of the bonds of any issue, the signature shall nevertheless be valid and sufficient for all purposes. The coupons attached to the bonds shall be executed by the facsimile signature of the chairman of the board.

(e)(1) In the resolution authorizing the issuance of any issue of bonds, the board may provide for the initial issuance of one (1) or more bonds aggregating the principal amount of the entire issue and may, in the resolution, make such provisions for installment payments of the principal amount of the bonds as it may consider desirable and may provide for the making of the bonds payable to bearer or otherwise, registrable as to principal or as to both principal and interest, and where interest accruing thereon is not represented by interest coupons, for the endorsement of payment of interest on such bonds.

(2) The board may make provision in the resolution for the manner and circumstances in which and under which the bonds may in the

future at the request of the holders thereof be converted into bonds of smaller denomination, which bonds of smaller denomination may in turn be either coupon bonds or bonds registrable as to principal or registrable as to principal and interest.

History. Acts 1963, No. 186, § 3; 1970 § 16; 1981, No. 425, § 16; A.S.A. 1947, (Ex. Sess.), No. 56, §§ 1, 2; 1975, No. 225, § 59-1119.

20-48-505. Liability of Board of Developmental Disabilities Services for bonds.

(a) It shall be plainly stated on the face of each bond issued that the bond has been issued under the provisions of this subchapter. Bonds issued under the provisions of this subchapter shall be general obligations only of the Board of Developmental Disabilities Services, and in no event shall they constitute an indebtedness for which the faith and credit of the State of Arkansas or any of its revenues are pledged. There shall be no mortgage or other lien executed on any lands or buildings belonging to the State of Arkansas.

(b) All agreements and contracts entered into by the board in connection with the issuance of any bonds hereunder shall be binding in all respects upon the board and its successors from time to time in accordance with the terms and provisions of the agreements or contracts. The terms and provisions of the agreements or contracts shall be enforceable by appropriate proceedings at law or in equity, or otherwise, including, without limitation, mandamus.

History. Acts 1963, No. 186, § 4; A.S.A. 1947, § 59-1120.

20-48-506. Nonliability of board members for bonds — Exception.

No member of the Board of Developmental Disabilities Services shall be personally liable on any bonds issued pursuant to this subchapter, or for any damages sustained by anyone in connection with agreements and contracts authorizing or pertaining to the bonds of any issue pursuant to this subchapter or the carrying out of any other authority conferred by this subchapter, unless the member involved has acted with a corrupt intent.

History. Acts 1963, No. 186, § 5; A.S.A. 1947, § 59-1121.

20-48-507. Revenue bonds secured by pledge of gross charges and surplus charges.

(a) The principal of, interest on, and paying agent's fees in connection with the revenue bonds of each issue shall be secured by a pledge of and payable in the first instance from the gross charges imposed by the Board of Developmental Disabilities Services pursuant to the

provisions of § 20-48-411 applicable to the particular properties financed in whole or in part by the proceeds of the bonds of the particular issue involved.

(b)(1) In addition, the board is authorized to pledge and to use for the payment of the principal of and interest on the bonds of any issue, and paying agent's fees, surplus charges applicable to existing properties and any other properties operated by the board, whether or not the other properties were financed in whole or in part by bonds issued under this subchapter.

(2) "Surplus charges", as that term is used in this section, means gross charges which are not pledged to any bond issue and also that amount of any charges that are pledged which is in excess of the amount necessary to meet all requirements of resolutions securing bonds to finance the particular properties to the payment of which the charges are specifically pledged.

(c) As specified in this subchapter, the resolution of the board pledging specific charges can control priorities as to the lien on the charges between successive issues.

(d) In addition, the board is authorized to use, as distinguished from pledge, any available revenues and funds of the board, including, without limitation, appropriated and cash funds, if available.

(e) All charges assessed and collected by the board pursuant to the authority conferred by § 20-48-411 are specifically declared to be cash funds and may be collected and deposited in such banks and depositories as shall be determined from time to time by the board.

(f) Furthermore, in connection with any charges which are pledged to the payment of any issue of bonds pursuant to this subchapter, the board is expressly authorized to make such agreements and contracts with the bondholders, or the trustee for the bondholders, embodied in a resolution or trust indenture, referred to above, authorizing and securing the particular issue of bonds, with reference to the maintenance of the maximum possible occupancy and the maintenance of charges at a specified level, as the board may determine to be necessary or desirable in connection with the issuance of bonds on the most favorable terms possible.

History. Acts 1963, No. 186, § 7;
A.S.A. 1947, § 59-1122.

20-48-508. Issuance of refunding bonds.

(a) Bonds may be issued pursuant to this subchapter for the purpose of refunding any issue of bonds theretofore issued under the provisions of this subchapter.

(b) When refunding bonds are issued, the refunding bonds may either be sold or delivered in exchange for the bonds being refunded. If sold, the proceeds may be either applied to the payment of the bonds being refunded or deposited in escrow for the retirement thereof.

(c) All refunding bonds issued under this section shall in all respects be authorized, issued, and secured in the manner provided for other bonds issued under this subchapter and shall have all the attributes of such bonds.

(d) The resolution under which the refunding bonds are issued may provide that any of the refunding bonds shall have the same priority of lien on the charges pledged for their payment as was enjoyed by the bonds refunded thereby.

History. Acts 1963, No. 186, § 8;
A.S.A. 1947, § 59-1123.

20-48-509. Taxation of bonds.

Bonds issued under the provisions of this subchapter shall be exempt from all state, county, and municipal taxes. This exemption includes income and estate taxes.

History. Acts 1963, No. 186, § 9; A.S.A. 1947, § 59-1124.

A.C.R.C. Notes. Language excluding property taxes from the exemption provided by this section was deleted pursuant to Arkansas Constitution, Amendment 57, § 1 and § 26-3-302. The Arkansas Constitution, Amendment 57, § 1 provides that the General Assembly may classify intangible personal property for assessment at

lower percentages of value than other property and may exempt one or more classes of intangible personal property from taxation, or may provide for the taxation of intangible personal property on a basis other than ad valorem. Section 26-3-302 exempt all intangible personal property in this state from all ad valorem tax levies of counties, cities, and school districts in the state as of January 1, 1976.

20-48-510. Municipalities, boards, commissions, etc. authorized to invest in bonds.

(a) Any municipality or any board, commission, or other authority established by ordinance of any municipality, or the boards of trustees, respectively, of the firemen's relief and pension fund and the policemen's pension and relief fund of any municipality, or any county, or the board of trustees of any retirement system created by the General Assembly, may, in its discretion, invest any of its funds in the bonds of the Board of Developmental Disabilities Services issued under the provisions of this subchapter.

(b) The bonds issued under the provisions of this subchapter shall be eligible to secure the deposit of public funds.

History. Acts 1963, No. 186, § 10;
A.S.A. 1947, § 59-1125.

20-48-511. Developmental disabilities — Timber sales proceeds — Capital improvements and equipment.

(a)(1) The Division of Developmental Disabilities Services is authorized to have cash fund accounts for capital improvements to physical

plants and for the purchase of capital equipment for the six (6) human development centers operated by the division.

(2) The cash funds shall be held by the division from the proceeds of the sale of timber that may be harvested from land owned by the division.

(3) The harvesting of timber is specifically authorized to provide funds to finance capital improvements to the physical plants and for major capital equipment purchases at any of the six (6) human development centers.

(b) All expenditures of funds derived from the sale of timber will be expended in accordance with relevant state procurement laws.

(c)(1) The division shall report all income derived from timber management to the Chief Fiscal Officer of the State and to the Legislative Council.

(2) Any contracts initiated for the harvesting of timber shall be submitted to the Subcommittee on Review for review.

History. Acts 1999, No. 1537, § 97.

A.C.R.C. Notes. Acts 2001, No. 1639, § 14, provided: "DEVELOPMENTAL DISABILITIES — TIMBER SALES PROCEEDS — CAPITAL IMPROVEMENTS AND EQUIPMENT. The Division of Developmental Disabilities Services is authorized to have cash fund accounts for capital improvements to physical plants and for the purchase of capital equipment for the six human development centers operated by the Department of Human Services, Division of Developmental Services. The cash funds shall be held by the Department of Human Services, Division of Developmental Disabilities Services from the proceeds of the sale of timber that may be harvested from land owned by the Division of Developmental Disabilities Services. The harvesting of timber is

specifically authorized to provide funds to finance capital improvements to the physical plants and for major capital equipment purchases at any of the six human development centers.

"The Division of Developmental Disabilities Services shall report all income derived from timber management to the Chief Fiscal Officer of the State and the Arkansas Legislative Council. Any contracts initiated for the harvesting of timber shall be submitted to the Review Subcommittee of the Arkansas Legislative Council for review. All expenditures of funds derived from the sale of timber will be expended in accordance with relevant state purchasing laws.

"The provisions of this section shall be in effect only from July 1, 2001 through June 30, 2003."

SUBCHAPTER 6 — LOCATION ACT FOR COMMUNITY HOMES FOR DEVELOPMENTALLY DISABLED PERSONS

SECTION.

- 20-48-601. Title.
- 20-48-602. Purpose.
- 20-48-603. Definitions.
- 20-48-604. Zoning — Permitted use.
- 20-48-605. Issuance and renewal of licenses.
- 20-48-606. Regulations — Density control.

SECTION.

- 20-48-607. Application for license.
- 20-48-608. List of family homes.
- 20-48-609. Comprehensive plans.
- 20-48-610. Compliance with appearance or structural requirements in certain districts.
- 20-48-611. Restriction by private property agreement void.

A.C.R.C. Notes. References to “this subchapter, which was enacted subsequently” in the text of chapter 48, subchapters 1-5, may not apply to this

20-48-601. Title.

This subchapter shall be known as the “Location Act for Community Homes for Developmentally Disabled Persons”.

History. Acts 1987, No. 611, § 1.

20-48-602. Purpose.

The General Assembly declares that it is the goal of this subchapter to improve the quality of life of all developmentally disabled persons and to integrate developmentally disabled persons into the mainstream of society by ensuring them the availability of community residential opportunities in the residential areas of this state. In order to implement this goal, this subchapter should be liberally construed toward that end.

History. Acts 1987, No. 611, § 2.

20-48-603. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1)(A) “Developmental disability” means a disability of a person which:

(i) Is attributable to mental retardation, cerebral palsy, epilepsy, or autism;

(ii) Is attributable to any other condition of a person found to be closely related to mental retardation because it results in impairment of general intellectual functioning or adaptive behavior similar to those of mentally retarded persons or requires treatment and services similar to those required for the persons;

(iii) Is attributable to dyslexia resulting from mental retardation, cerebral palsy, epilepsy, or autism; and

(iv) Has continued or can be expected to continue indefinitely.

(B) “Development disability” does not refer to other forms of mental disease or defect not defined in this section;

(2) “Developmentally disabled person” means a person with a developmental disability as defined in this section;

(3) “Division” means the Division of Developmental Disabilities Services of the Department of Human Services or the staff of the division where the context so indicates;

(4)(A) “Family Home I” means a community-based residential home licensed by the division that provides room and board, personal care, habilitation services, and supervision in a single-family environment for not more than eight (8) developmentally disabled persons; and

(B) "Family Home II" means a community-based residential home licensed by the division that provides room and board, personal care, habilitation services, and supervision in a multi-family environment for more than eight (8), but fewer than sixteen (16), developmentally disabled persons;

(5) "Permitted use" means a use by right which is authorized in residential zoning districts; and

(6) "Political subdivision" means a county or municipal corporation and includes any boards, commissions, or councils governing land use on behalf of the political subdivision.

History. Acts 1987, No. 611, § 3.

20-48-604. Zoning — Permitted use.

(a) A Family Home I is a residential use of property for the purposes of zoning and shall be treated as a permitted use in all residential zones or districts, including all single-family residential zones or districts of all political subdivisions. No political subdivision may require that a Family Home I or its owner or operator obtain a conditional use permit, special use permit, special exception, or variance.

(b) A Family Home II is a multi-family residential use of a property for the purpose of zoning and shall be treated as a permitted use in all zoning districts of all political subdivisions allowing multi-family uses. No political subdivision may require that a Family Home II or its owner or operator obtain a conditional use permit, special use permit, special exception, or variance.

History. Acts 1987, No. 611, § 4.

20-48-605. Issuance and renewal of licenses.

(a) For the purposes of safeguarding the health and safety of developmentally disabled persons and avoiding over-concentration of Family Homes I and II, either alone or in conjunction with similar community-based residences, the Division of Developmental Disabilities Services shall inspect and license the operation of family homes and may renew and revoke their licenses.

(b) A license is valid for one (1) year from the date it is issued or renewed although the division may inspect the homes more frequently, if needed.

(c) The division shall not issue or renew and may revoke the license of a family home not operating in compliance with this section and regulations adopted hereunder.

History. Acts 1987, No. 611, § 5.

20-48-606. Regulations — Density control.

(a) The Division of Developmental Disabilities Services shall promulgate regulations pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq., which shall encompass the following matters:

(1)(A) Limits on the number of new Family Homes I and II to be permitted on blocks, block faces, and other appropriate geographic areas taking into account the existing residential population density and the number, occupancy, and location of similar community residential facilities serving persons in drug, alcohol, juvenile, child, parole, and other treatment programs as well as any other dissimilar facilities such as public housing, soup kitchens at churches, and boarding homes.

(B) Density limits as follows:

City Population	Total Number of Homes I and II
1,000 or fewer	1
1,001 — 9,999	1 for every 2,000
10,000 — 49,000	1 for every 3,000
50,000 — 249,000	1 for every 10,000
250,000 —	1 for every 20,000

(C) There shall be three hundred feet (300') between family homes unless otherwise permitted by local ordinance. There shall be three thousand feet (3,000') between family homes in cities over thirty thousand (30,000) population unless otherwise permitted by local ordinance.

(2) Assurance that adequate arrangements are made for the residents of family homes to receive such care and habilitation as are necessary and appropriate to their needs and to further their progress towards independent living and that they have access to appropriate services such as public transportation, health care, recreation facilities, and shopping centers;

(3) Protection of the health and safety of the residents of Family Homes I and II, however, compliance with these regulations shall not relieve the owner or operator of any Family Home I or II of the obligation to comply with the requirements or standards of a political subdivision pertaining to setback, lot size, flood zones, outside appearance, building, housing, health, fire, safety, and motor vehicle parking space that generally apply to single family residences in the zoning district for Family Home I or multi-family use districts for Family Home II. No requirements for business licenses, gross receipt taxes, environmental impact studies or clearances may be imposed on the homes if those fees, taxes, or clearances are not imposed on all structures in the zoning district housing a like number of persons;

(4)(A) Procedures by which any resident of a residential zoning district or the governing body of a political subdivision in which a Family Home I or II is or is to be located may petition the division to

deny an application for a license to operate a Family Home I or II on the grounds that the operation of the home would be in violation of the limits established pursuant to subdivisions (1)(A) or (B) of this section or that the proposed location is an area of high risk to the health and safety of the residents of the family home.

(B) Petitions claiming the high risk area basis for denial must set forth and document one (1) or more of the following high risk rationales:

- (i) High crime area;
- (ii) Close proximity to stored hazardous materials;
- (iii) Dangerous traffic pattern;
- (iv) Frequent flooding; or
- (v) Insufficient fire protection.

(b) The division shall furnish a copy of proposed regulations promulgated hereunder to the Arkansas Municipal League, the Arkansas Association of County Governments, and the Capitol Zoning Commission at least thirty (30) days prior to the public hearing to be held thereon.

History. Acts 1987, No. 611, § 5.

A.C.R.C. Notes. Acts 1987, No. 611, § 5, provided, in part, that, within 180 days of the enactment of this chapter, the

division shall promulgate regulations pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

20-48-607. Application for license.

(a) All applicants for a license to operate a Family Home I or II shall apply to the Division of Developmental Disabilities Services for the license and shall file a copy of the application with the governing body of the political subdivision having jurisdiction over the zoning of the land on which the Family Home I or II is to be located.

(b) Notice of the application shall be sent by mail addressed to the resident as listed in the city directory or occupant of all buildings located within two hundred feet (200') of the proposed site.

(c)(1) All applicants shall post a sign not less than twelve inches by eighteen inches (12" x 18") at the site.

(2) The sign shall contain such statements as required by regulations promulgated pursuant to this subchapter.

(d) All applications must include population and occupancy statistics reflecting compliance with the limits established pursuant to § 20-48-606(a)(1)(A) and (B).

(e) The division may not issue a license for a family home until the applicant has submitted proof of filing with the governing body of the political subdivision having jurisdiction over the zoning of the land on which the home is to be located a copy of the application at least thirty (30) days prior to the granting of the license and any amendment of the application increasing the number of residents to be served at least fifteen (15) days prior to the granting of a license.

History. Acts 1987, No. 611, § 6.

20-48-608. List of family homes.

In order to facilitate the implementation of § 20-48-606(1)(A) and (B), the Division of Developmental Disabilities Services shall maintain a list of the location, capacity, and current occupancy of all Family Homes I and II. The division shall ensure that this list shall not contain the names or other identifiable information about any residents of the homes and that copies of this list shall be available to any resident of this state and any state agency or political subdivision upon request.

History. Acts 1987, No. 611, § 7.

20-48-609. Comprehensive plans.

(a) Any political subdivision which currently has zoning restrictions or hereafter adopts zoning restrictions may develop a comprehensive plan for providing adequate sites for Family Homes I and II and submit the plan to the division along with population and occupancy statistics reflecting compliance with the limits established pursuant to § 20-48-606(a)(1)(A) and (B).

(b) The plan may also delineate unsuitable sites due to high risks set forth in § 20-48-606(4).

(c) The division shall thereafter consult the comprehensive plan filed by the political subdivision in considering licensure of Family Homes I and II for that political subdivision.

History. Acts 1987, No. 611, § 9.

20-48-610. Compliance with appearance or structural requirements in certain districts.

Nothing in this subchapter shall be construed as relieving the owner or operator of any Family Home I or II of the obligation to comply with outside appearance requirements or structural requirements for location of a Family Home I or II within a local historic district or within the Capitol Zoning District.

History. Acts 1987, No. 611, § 8.

20-48-611. Restriction by private property agreement void.

(a) Any restriction, reservation, condition, exception, or covenant in any subdivision plan, deed, or other instrument of or pertaining to the transfer, sale, lease, or use of property which would permit residential use of property but prohibit the use of the property as a Family Home I or II for developmentally disabled persons, to the extent of the prohibition, shall be void as against the public policy of this state and shall be given no legal or equitable force or effect.

(b) Nothing in this subchapter shall be construed directly or analogously to affect the rights of property owners to exclude by express or judicially implied agreements other property uses which are not the subject of this subchapter.

History. Acts 1987, No. 611, § 10.

SUBCHAPTER 7 — RELATIONSHIP BETWEEN STATE AND COMMUNITIES TO PROVIDE FOR COMMUNITY-BASED SERVICES

SECTION.

20-48-701. Finding.

20-48-702. Reimbursement rate structure.

SECTION.

20-48-703. Eligibility.

20-48-704. Code system of reimbursement.

A.C.R.C. Notes. References to “this chapter” in subchapters 1 through 5 may not apply to this subchapter, which was enacted subsequently.

Effective Dates. Acts 2001, No. 1792, § 5: Apr. 19, 2001. Emergency clause provided: “It is found and determined by the General Assembly that community programs are struggling to attain the resources necessary to provide individuals with developmental disabilities with the community-based services to which they are entitled by federal and state mandates which they rightfully deserve; that the costs to the community program which have accumulated over a twenty-five (25) year period of unfunded mandates is shifting the service dollar to compliance processes rather than to treatment of individuals; that the imposition of a rate structure which will cover the costs of

treatment services as well as processes and procedures required by federal and state mandates will allow community-based programs to provide quality treatment services and therefore, enhance the level of safety and security for individuals choosing community-based services. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

20-48-701. Finding.

The General Assembly finds that the State of Arkansas contracts with community-based programs serving individuals with developmental disabilities as quasi-governmental instrumentalities of the state in order to provide a service that the state would otherwise provide for this population through state-operated programs and facilities.

History. Acts 2001, No. 1792, § 1.

20-48-702. Reimbursement rate structure.

(a)(1) To provide viable options for an array of community-based services for individuals with developmental disabilities, the Depart-

ment of Human Services, subject to state and federal funding restrictions, shall establish a reimbursement rate structure for contracting with community programs licensed by the Board of Developmental Disabilities Services that will cover costs of all federal and state mandates for which they are held responsible by the department and for any additionally required processes the department may elect to implement for cost containment and management purposes over and above the established reimbursement rates for costs of treatment services.

(2) By January 1, 2002, the department will design and conduct a rate and cost-of-service review of the reasonable and efficient prospective costs necessarily incurred to provide Medicaid-covered and state-covered services within the community to individuals with developmental disabilities. Subject to federal and state funding restrictions, the department will fund Medicaid services for persons with developmental disabilities in accordance with findings contained in the review and provide state funds for those services to which the individuals are entitled under federal and state laws that are not covered by the Medicaid program. By June 30, 2002, the department will adopt regulations and standards, approved pursuant to this subchapter, which clearly define the state's responsibility to individuals eligible for services under federal laws, including, but not limited to, the Americans With Disabilities Act, Pub. L. 99-457, Pub L. 94-142, the Rehabilitation Act of 1973, Section 504, and state laws, including §§ 20-48-101, 20-48-603, and 20-14-502, and more specifically:

(A) The categories of services and service limits on each category which will be provided through the Medicaid state plan; and

(B) The categories of services and service limits which will be provided with state general revenue funds or funds that are applicable for provider client services, or both.

(3) There shall be a quarterly progress report to the House Interim Committee on Public Health, Welfare, and Labor and the Senate Interim Committee on Public Health, Welfare, and Labor by the department on the categories of services and respective service limits, service eligibility guidelines for each service component, and the rate structure based on prospective costs.

(4) Nothing in this subchapter shall be construed to imply the adoption of cost-reimbursement methodology as opposed to a reasonable and necessary rate structure based on prospective costs. However, in the event that the Division of Medical Services of the Department of Human Services develops a new funding mechanism for community-based services provided through the University of Arkansas for Medical Sciences which is a full-cost reimbursement methodology with additional state matching funds provided by existing revenues within that system:

(A) The new service model shall be developed to interface with the existing community-based programs through interagency agreements that enhance and broaden the level of care without duplicating

services in communities which already have an array of services for children from birth to twenty-one (21); and

(B) The university will staff twelve (12) regional clinics, provided the pediatric specialists are available at the university. These will be conducted on a quarterly basis in coordination with local providers to provide diagnosis, evaluation, and consultation by the pediatric specialists employed by the university to the local professional staffs of community programs. The reimbursement for the costs of conducting these outreach clinics must be fully funded by the cost-reimbursement methodology under any new funding model developed for the university by the department.

(b) Subject to state and federal funding restrictions, the reimbursement rates shall be revised annually with market-basket rate adjustments to provide resources to the community-based programs necessary to provide persons choosing community-based services quality care assurance in a safe, healthy environment.

History. Acts 2001, No. 1792, § 2.

U.S. Code. The Americans With Disabilities Act, referred to in this section, is codified primarily as 42 U.S.C. § 12101 et seq.

The Rehabilitation Act of 1973, referred to in this section, is codified as 29 U.S.C. § 701 et seq.

20-48-703. Eligibility.

(a) Eligibility for services and appropriate placement in the least restrictive environment for individuals with developmental disabilities under any of the service models included in the state's Medicaid plan with the Health Care Financing Administration of the United States Department of Health and Human Services or for services covered from state general revenue dollars shall be made by the interdisciplinary team composed in keeping with federal and state laws pertaining to individuals with special needs. This section does not negate nor preclude the rights of individuals with developmental disabilities under existing federal and state laws.

(b) Subject to approval by the administration, the Department of Human Services will accept an individualized family service plan or an individualized program plan developed in conformity with all applicable state and federal laws as prior authorization for Medicaid-covered therapies provided to persons with developmental disabilities. Prior authorization does not preclude postpayment reviews or other utilization control measures.

(c) For individuals with developmental disabilities who, pursuant to the diagnosis, evaluation, and assessments conducted by the interdisciplinary team, in conformity with all applicable federal and state laws, are found to fall within the eligibility guidelines adopted pursuant to this subchapter, and where the individual's primary care physician, independent of the service provider, serves as the gatekeeper and prescribes day treatment services, referred to as developmental day treatment services under the present developmental day treatment

clinic services model, prior approval is not required for up to five (5) hours of daily services. Should the funding model for the day treatment services be changed in the state’s Medicaid plan with the administration, the five (5) hours per day shall remain the floor to afford those families who choose to keep their disabled child or adult in the community, thereby bearing a considerable responsibility for the care and expenses related to the treatment and care.

History. Acts 2001, No. 1792, § 3.

20-48-704. Code system of reimbursement.

- (a) The conversion to the federally mandated current procedural terminology code system of reimbursement shall take into account the intent of this law to provide sources of funding that cover the costs of services to individuals who choose community-based options, within the adopted and approved eligibility standard, including the prescribed treatment services and all required compliance mandates from the federal and state governments.
- (b) In the event that it is evident that the developmental day treatment clinic services codes will be excluded by the Health Care Financing Administration, the Division of Medical Services of the Department of Human Services shall take all necessary steps to apply to the administration for approval of a service model that will continue to provide an array of community-based service options for children and adults comparable to or greater than those under the present developmental day treatment clinic services model.

History. Acts 2001, No. 1792, § 4.

SUBCHAPTER 8 — CRIMINAL RECORDS CHECKS FOR EMPLOYEES OF PROVIDERS OF CARE TO DISABLED ADULTS

SECTION.	SECTION.
20-48-801. Definitions.	20-48-807. Regulations — Remedies for failure to comply — Challenges to completeness and accuracy of information.
20-48-802. Mandatory criminal history records checks for applicants and employees of service providers.	20-48-808. Confidentiality.
20-48-803. Evidence of records checks.	20-48-809. Immunity.
20-48-804. Disqualification from employment — Denial or revocation — Penalties.	20-48-810. Exclusions — Licensed professionals — Completion of criminal history records check.
20-48-805. Request for records check — Requirement.	20-48-811. Effective date — Criminal history record checks for applicants and employees.
20-48-806. Duties of Identification Bureau and licensing agencies.	

20-48-801. Definitions.

As used in this subchapter:

(1) "Bureau" means the Identification Bureau of the Department of Arkansas State Police;

(2) "Care" means treatment, services, assistance, education, training, instruction, or supervision for which the service provider is reimbursed either directly or by arrangement with a government agency or receives reimbursement or payment either directly or indirectly from Medicaid;

(3) "Central registry check" means a review of a central registry data base maintained by a state agency;

(4) "Determination" means a service provider's determination that an applicant or employee is or is not disqualified from employment based on the criminal history of the applicant or employee;

(5) "Developmentally disabled person" means a person with a disability that is:

(A) Attributable to mental retardation, cerebral palsy, epilepsy, or autism;

(B) Attributable to any other condition of a person found to be closely related to mental retardation because it results in an impairment of general intellectual functioning or adaptive behavior similar to those of mentally retarded persons or requires treatment and services similar to those required for mentally retarded persons; or

(C) Attributable to dyslexia resulting from a disability associated with mental retardation, cerebral palsy, epilepsy, or autism;

(6) "Employee" means any adult person residing in an alternative living home and any person who provides care to individuals with disabilities on behalf of, under the supervision of, or by arrangement with a service provider or any person employed by a service provider, including persons provided by or pursuant to contract with a private placement agency or contract staffing agency unless the person is a family member or a volunteer or works in an administrative capacity and does not provide direct patient care;

(7) "Index" means the data base of completed background checks maintained by the bureau that have been conducted on applicants for employment with and employees of a service provider;

(8) "Licensing agency" means the government agency charged with licensing the service provider to provide care to developmentally disabled persons;

(9) "National criminal history records check" means a review of criminal history records maintained by the Federal Bureau of Investigation based on fingerprint identification or other positive identification methods;

(10) "Report" means a statement of the criminal history of an applicant or employee of the service provider issued by the bureau;

(11) "Service provider" means the qualified entity responsible for direct care services to developmentally disabled persons; and

(12) "State criminal history records check" means a review of state criminal history records conducted by the bureau.

History. Acts 2001, No. 1548, § 1.

20-48-802. Mandatory criminal history records checks for applicants and employees of service providers.

(a)(1) When a person applies for a position as an employee of a service provider, the service provider shall require each applicant pursuant to this section to complete a criminal history records check form. Prior to employment, the applicant must be fingerprinted. The fingerprints shall be available for use by the Federal Bureau of Investigation and for transmittal to the Federal Bureau of Investigation for a national criminal history records check. The information obtained from the national criminal history records check conducted pursuant to this section may be used by the service provider to determine the applicant's eligibility for employment.

(2) If the service provider intends to make an offer of employment to the applicant, the service provider shall within five (5) business days of that decision forward the criminal history records check form and the applicant's fingerprint card to the bureau accompanied by appropriate payment and request the bureau to review the bureau's index of criminal history records.

(3) Within three (3) business days of the receipt of a request to review the index, the bureau shall notify the service provider whether the index contains any criminal history records on the applicant.

(4)(A) A service provider may make an offer of temporary employment to an applicant pending receipt of notification from the bureau after conducting a central registry check.

(B) If no finding of fault records regarding the applicant are found in the central registry, then the service provider may continue to temporarily employ the applicant while the bureau completes a criminal history records check.

(C)(i) If a criminal history record regarding the applicant is found, then the applicant is temporarily disqualified from employment until the licensing agency issues a determination.

(ii) If the licensing agency issues a determination that the applicant is qualified, then the service provider may employ the applicant.

(b)(1) Except as provided in subdivision (b)(2) of this section, the bureau shall conduct a national criminal history records check on an applicant or employee upon receiving a request from a service provider.

(2) If the service provider can verify that the applicant or employee has been employed within the State of Arkansas to provide care to individuals with disabilities within sixty (60) days before the application or request from the service provider or has lived continuously in the state for the past five (5) years, the bureau shall conduct only a state criminal history records check on the applicant or employee.

(3) If the service provider determines the need to utilize temporary employees provided by a private placement agency or other contract

staffing company, it shall be the responsibility of the private placement agency or contract staffing agency to initiate the criminal background check as provided by this subchapter before the placement of the person in the service provider's facility, and the private placement agency or contract staffing agency must document the pending background check or the final determination for the service provider.

(c)(1) Upon completion of a criminal history records check on an applicant or employee, the bureau shall issue a report to the entity making the request.

(2) The licensing agency shall determine whether the applicant or employee is disqualified from employment with the service provider and shall forward its determination to the service provider.

(3) If the licensing agency determines that an applicant or employee is disqualified from employment, then the service provider shall terminate the employment of the employee or shall deny employment to the applicant.

(d) Before making an offer of employment to an applicant and on an ongoing basis for current employees, as required in § 20-48-811(b), a service provider shall inform applicants and employees that continued employment is contingent upon the results of periodic criminal history records checks and that the applicant or employee has the right to obtain a copy of the report from the bureau.

History. Acts 2001, No. 1548, § 1.

20-48-803. Evidence of records checks.

Each service provider shall maintain on file, subject to inspection by the Arkansas Crime Information Center, the Identification Bureau of the Department of Arkansas State Police, or the licensing agency, evidence that criminal history records checks have been initiated on all applicants and employees as required by § 20-48-811(b) and that a copy of each determination has been received from the licensing agency.

History. Acts 2001, No. 1548, § 1.

20-48-804. Disqualification from employment — Denial or revocation — Penalties.

(a)(1) A licensing agency shall issue a determination that a person is disqualified from employment with a service provider if the person has been found guilty of or pleaded guilty or nolo contendere to any of the offenses listed in subsection (b) of this section; and

(2) A service provider shall not knowingly employ a person who has pleaded guilty or nolo contendere to or has been found guilty of any of the offenses listed in subsection (b) of this section by any court in the State of Arkansas or of any similar offense by a court in another state or of any similar offense by a federal court:

(b)(1) Capital murder, as prohibited in § 5-10-101;

- (2) Murder in the first degree and second degree, as prohibited in §§ 5-10-102 and 5-10-103;
- (3) Manslaughter, as prohibited in § 5-10-104;
- (4) Negligent homicide, as prohibited in § 5-10-105;
- (5) Kidnapping, as prohibited in § 5-11-102;
- (6) False imprisonment in the first degree, as prohibited in § 5-11-103;
- (7) Permanent detention or restraint, as prohibited in § 5-11-106;
- (8) Robbery, as prohibited in § 5-12-102;
- (9) Aggravated robbery, as prohibited in § 5-12-103;
- (10) Battery, as prohibited in §§ 5-13-201, 5-13-202, and 5-13-203;
- (11) Aggravated assault, as prohibited in § 5-13-204;
- (12) Introduction of controlled substance into body of another person, as prohibited in § 5-13-210;
- (13) Terroristic threatening in the first degree, as prohibited in § 5-13-301;
- (14) Rape and carnal abuse in the first degree, second degree, and third degree, as prohibited in §§ 5-14-103 and 5-14-104 — 5-14-106 [repealed];
- (15) Sexual abuse in the first degree and second degree, as prohibited in §§ 5-14-108 and 5-14-109 [repealed];
- (16) Sexual indecency with a child, as prohibited in § 5-14-110;
- (17) Violation of a minor in the first degree and second degree, as prohibited in §§ 5-14-120 and 5-14-121 [repealed];
- (18) Incest, as prohibited in § 5-26-202;
- (19) Offenses against the family, as prohibited in §§ 5-26-303 — 5-26-306;
- (20) Endangering the welfare of an incompetent person in the first degree, as prohibited in § 5-27-201;
- (21) Endangering the welfare of a minor in the first degree, as prohibited in § 5-27-203;
- (22) Permitting child abuse, as prohibited in § 5-27-221(a)(1) and (3);
- (23) Engaging children in sexually explicit conduct for use in visual or print media, transportation of minors for prohibited sexual conduct, pandering or possessing visual or print medium depicting sexually explicit conduct involving a child, or use of a child or consent to use of a child in a sexual performance by producing, directing, or promoting a sexual performance by a child, as prohibited in §§ 5-27-303, 5-27-304, 5-27-305, 5-27-402, and 5-27-403;
- (24) Felony adult abuse, as prohibited in § 5-28-103;
- (25) Theft of property, as prohibited in § 5-36-103;
- (26) Theft by receiving, as prohibited in § 5-36-106;
- (27) Arson, as prohibited in § 5-38-301;
- (28) Felony violation of the Uniform Controlled Substances Act, § 5-64-101 et seq., as prohibited in § 5-64-401;
- (29) Burglary, as prohibited in § 5-39-201;
- (30) Promotion of prostitution in the first degree, as prohibited in § 5-70-104;

(31) Stalking, as prohibited in § 5-71-229;
(32) Forgery, as prohibited in § 5-37-201;
(33) Breaking or entering, as prohibited in § 5-39-202;
(34) Obtaining a controlled substance by fraud, as prohibited in § 5-64-403; and

(35) Criminal attempt, criminal complicity, criminal solicitation, or criminal conspiracy, as prohibited in §§ 5-3-201, 5-3-202, 5-3-301, and 5-3-401, to commit any of the offenses listed in this subsection.

(c)(1) The provisions of this section shall not be waived by the licensing or requesting agency. Except as provided in subdivision (c)(2) of this section, one (1) conviction for an offense listed in subsection (b) of this section shall not disqualify an applicant for employment if the date of the conviction is at least ten (10) years prior to the date of the application and the individual has had no criminal convictions of any type or nature during the ten-year period.

(2) Because of the serious nature of the offenses and the close relationship to the type of work that is to be performed, the following offenses shall result in permanent disqualification of employment:

(A) Capital murder, as prohibited in § 5-10-101;

(B) Murder in the first degree and second degree, as prohibited in §§ 5-10-102 and 5-10-103;

(C) Kidnapping, as prohibited in § 5-11-102;

(D) Rape and carnal abuse in the first degree, second degree, and third degree, as prohibited in §§ 5-14-103 and 5-14-104 — 5-14-106 [repealed];

(E) Sexual abuse in the first and second degree, as prohibited in §§ 5-14-108 and 5-14-109 [repealed];

(F) Endangering the welfare of an incompetent person in the first degree, as prohibited in § 5-27-201;

(G) Felony adult abuse, as prohibited in § 5-28-103; and

(H) Arson, as prohibited in § 5-38-301.

(3) An applicant or employee shall not be disqualified from permanent employment if the applicant or employee has been found guilty of or has pleaded guilty or nolo contendere to a misdemeanor if the offense did not involve exploitation of an adult, abuse of a person, neglect of a person, theft, or sexual contact.

(d) If a service provider fails or refuses to cooperate in obtaining criminal history records checks, those circumstances shall be grounds to deny or revoke the service provider's license or other operating authority.

(e) Any service provider violating this subchapter shall be guilty of a Class A misdemeanor for each violation.

History. Acts 2001, No. 1548, § 1.

20-48-805. Request for records check — Requirement.

(a) A request for a state criminal history records check on a person shall include a completed statement that:

- (1) Contains the name, address, and date of birth appearing on a valid identification document issued by a government entity to the person who is the subject of the check;
- (2) Indicates whether the person has been found guilty of or pleaded guilty or nolo contendere to a crime and, if so, includes a description of the crime and the particulars of the finding of guilt or the plea;
- (3) Notifies the person that qualified entities may request reports of state criminal history records checks;
- (4) Consents to disclosure of reports and determinations as provided by this subchapter;
- (5) Notifies the person that prior to the completion of a state criminal history records check, the service provider may choose to deny the employee unsupervised access to a person to whom the service provider provides care;
- (6) Informs the person how to object to the content of reports; and
- (7) Contains the notarized signature of the person who is the subject of the check.

(b) Each request for a national criminal history records check shall conform to the requirements for a state criminal history records check and shall include a complete set of fingerprints.

History. Acts 2001, No. 1548, § 1.

20-48-806. Duties of Identification Bureau and licensing agencies.

- (a) After receipt of a request for a criminal history records check, the Identification Bureau of the Department of Arkansas State Police shall make reasonable efforts to respond to requests for state criminal history records checks within twenty (20) calendar days and to respond to requests for national criminal history records checks within ten (10) calendar days.
- (b)(1) The bureau shall maintain an index of the results of each applicant's or employee's criminal history records check.
- (2) The bureau shall furnish a report to the service provider upon completion of each criminal history records check and upon request of the licensing agency.
- (c) The bureau shall develop forms to be used for criminal history records checks conducted under this subchapter.

History. Acts 2001, No. 1548, § 1.

20-48-807. Regulations — Remedies for failure to comply — Challenges to completeness and accuracy of information.

- (a) The Arkansas Crime Information Center, the Identification Bureau of the Department of Arkansas State Police, and each licensing or requesting agency shall cooperate to prepare forms and promulgate consistent regulations as necessary to implement this subchapter.

(b) The licensing agency shall establish remedies to be imposed on a service provider licensed by the agency for failure to comply with this subchapter.

(c) A person may challenge the completeness or accuracy of criminal history information pursuant to § 12-12-1013.

History. Acts 2001, No. 1548, § 1.

20-48-808. Confidentiality.

(a) All reports obtained under this subchapter are confidential and are restricted to the exclusive use of the Arkansas Crime Information Center, the Identification Bureau of the Arkansas State Police, the licensing agency, the service provider or requesting agency, and the person who is the subject of the report.

(b) The information contained in reports shall not be released or otherwise disclosed to any other person or agency except by court order and is specifically exempt from disclosure under the Freedom of Information Act of 1967, § 25-19-101 et seq., except to the licensing agency, the service provider, or the requesting agency.

History. Acts 2001, No. 1548, § 1.

20-48-809. Immunity.

Individuals, the licensing agency, the service provider, and a requesting agency are immune from suit or liability for damages for acts or omissions other than malicious acts or omissions occurring in the performance of duties imposed by this subchapter.

History. Acts 2001, No. 1548, § 1.

20-48-810. Exclusions — Licensed professionals — Completion of criminal history records check.

(a) This subchapter shall not apply to persons who render care subject to professional licenses obtained pursuant to:

(1) Section 17-27-101 et seq., regarding licensed professional counselors;

(2) Section 17-82-101 et seq., regarding dentists;

(3) Section 17-87-101 et seq., regarding nurses;

(4) Section 17-88-101 et seq., regarding occupational therapists;

(5) Section 17-92-101 et seq., regarding pharmacists;

(6) Section 17-93-101 et seq., regarding physical therapists;

(7) Section 17-95-201 et seq., regarding physicians and surgeons;

(8) Section 17-96-101 et seq., regarding podiatrists;

(9) Section 17-97-101 et seq., regarding psychologists and psychological examiners;

(10) Section 17-100-101 et seq., regarding speech-language pathologists and audiologists;

(11) Section 17-103-101 et seq., regarding social workers; or

(12) Section 20-10-401 et seq., regarding nursing home administrators.

(b)(1) The term “professional license” shall not include certification.

(2) Certified persons include certified nursing assistants and certified home health aides.

(c) Any person who submits evidence of having maintained employment in the State of Arkansas for the past twelve (12) months and of successfully completing a criminal history records check within the last twelve (12) months or in accordance with that person’s professional license shall not be required to apply for a criminal history records check under this subchapter.

History. Acts 2001, No. 1548, § 1.

20-48-811. Effective date — Criminal history record checks for applicants and employees.

(a) All applicants for jobs involving direct care services to developmentally disabled adult persons hired on and after August 13, 2001, shall apply for criminal history records checks.

(b) Service providers who offer direct care services to developmentally disabled adult persons shall complete criminal history records checks on all employees by October 1, 2002.

History. Acts 2001, No. 1548, § 1.

CHAPTER 49

STERILIZATION OF MENTAL INCOMPETENTS

SUBCHAPTER.

- 1. GENERAL PROVISIONS.
- 2. STERILIZATION PURSUANT TO PETITION.
- 3. STERILIZATION PURSUANT TO MEDICAL CERTIFICATION.

Publisher’s Notes. Acts 1971, No. 433, § 1 provided: “It is hereby found and determined by the General Assembly that the laws relating to the State Hospital, mental health, and mentally ill persons have been enacted piecemeal over a period of many years and that a great number of these laws are duplicating, conflicting, outmoded, and in urgent need of clarification and codification. It is the purpose and intent of the General Assembly in enacting this Act to clarify, update, and codify the various laws of the State relating to

the State Hospital, mental health, and mentally ill persons.”

Acts 1971, No. 433, ch. 10, § 1, provided: “It is the specific intent of the codification of the mental health laws contained in this Act to only effect those laws pertaining to mental health. Nothing in this Act shall be deemed to repeal or modify the provisions of Act 411 of 1955. No other laws shall be affected in any manner, nor shall the inclusion of such laws within this code in any way repeal or affect those laws as they otherwise apply.”

RESEARCH REFERENCES

Am. Jur. 53 Am. Jur. 2d, Mentally Impaired Persons, § 124-128.

C.J.S. 56 C.J.S., Mental H., § 8 et seq.

Ark. L. Rev. Sexual Sterilization — A New Rationale?, 26 Ark. L. Rev. 353.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

20-49-101. Definitions.

20-49-102. Sterilization by consent not restricted.

Effective Dates. Acts 1971, No. 433, ch. 10, § 4: Mar. 29, 1971. Emergency clause provided: "It is hereby found and determined by the General Assembly that the various mental health laws have been enacted over a period of one hundred years and are not properly organized so that they can be easily found; that many of these laws are antiquated and archaic and are in great need of updating in order to be useful; that the mental health laws

need to be placed in a comprehensive code for easy reference by those persons interested in and who use these laws; and that only by the immediate passage of this Act can this be achieved. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall become effective from and after its passage and approval."

20-49-101. Definitions.

As used in this chapter, unless the context otherwise requires:

- (1) "Court" shall mean probate court;
- (2) "Guardian" shall mean one appointed to have the care and custody of the person of an incompetent;
- (3) "Incompetent" shall mean a person as to whom it is proved:
 - (A) He or she is incapable of caring for himself or herself by reason of mental retardation, mental illness, imbecility, idiocy, or other mental incapacity;
 - (B) He or she manifests sexual inclinations which make it probable that he or she will procreate children unless he or she is rendered incapable of procreation; and
 - (C) There is no probability that his or her condition will improve so that he or she will become capable of caring for himself or herself.

History. Acts 1971, No. 433, ch. 5, § 1;
A.S.A. 1947, § 59-501.

CASE NOTES

Cited: McKinney v. McKinney, 305 Ark. 13, 805 S.W.2d 66 (1991).

20-49-102. Sterilization by consent not restricted.

Nothing contained in this chapter shall be construed to limit or restrict the right of a competent adult to consent to a sterilization procedure on himself or herself or to render liable any licensed hospital or its governing body or members thereof, or its superintendent, administrator, agents, representatives, servants, or employees nor any nurse or physician for the performance of a sterilization procedure upon a competent consenting adult.

History. Acts 1971, No. 433, ch. 5, § 1; A.S.A. 1947, § 59-501.

SUBCHAPTER 2 — STERILIZATION PURSUANT TO PETITION

SECTION.
20-49-201. Proceedings generally.
20-49-202. Petition.
20-49-203. Notice of hearing.
20-49-204. Hearing.

SECTION.
20-49-205. Method of sterilization.
20-49-206. Appeal.
20-49-207. Nonliability of physician or hospital.

Effective Dates. Acts 1971, No. 433, ch. 10, § 4; Mar. 29, 1971. Emergency clause provided: "It is hereby found and determined by the General Assembly that the various mental health laws have been enacted over a period of one hundred years and are not properly organized so that they can be easily found; that many of these laws are antiquated and archaic and are in great need of updating in order to be useful; that the mental health laws

need to be placed in a comprehensive code for easy reference by those persons interested in and who use these laws; and that only by the immediate passage of this Act can this be achieved. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall become effective from and after its passage and approval."

20-49-201. Proceedings generally.

- (a) The probate court shall have exclusive jurisdiction over all proceedings under this chapter, subject to the right of appeal.
- (b) The venue for all proceedings under this chapter shall be:
 - (1) In the county of this state which is the domicile of the incompetent; or
 - (2) If the incompetent is not domiciled in this state but resides in this state, in the county of his residence.
- (c) The court shall, on its own motion, appoint for the alleged incompetent a guardian ad litem, in compliance with the procedure set forth in § 16-61-108 for infant defendants.

History. Acts 1971, No. 433, ch. 5, § 1;
A.S.A. 1947, § 59-501.

CASE NOTES

Cited: McKinney v. McKinney, 305 Ark.
13, 805 S.W.2d 66 (1991).

20-49-202. Petition.

(a) A guardian, in the case of an adult alleged incompetent, or a parent or guardian, in the case of a minor alleged incompetent, may petition the court for the sterilization, under this chapter, of an alleged incompetent.

(b) The petition shall state and allege the following:

(1) The name, age, sex, residence, and post office address of the alleged incompetent;

(2) The name, residence, and post office address of any guardians of the person of the alleged incompetent;

(3) The names and addresses, so far as known or can reasonably be ascertained, of the persons most closely related to the alleged incompetent by blood or marriage;

(4) The name and address of any person or institution having the care and custody of the alleged incompetent; and

(5) That the alleged incompetent is incompetent, as defined in § 20-49-101(3).

History. Acts 1971, No. 433, ch. 5, § 1;
A.S.A. 1947, § 59-501.

20-49-203. Notice of hearing.

(a) Notice of the hearing for sterilization need not be given to any person:

(1) Who has signed the petition;

(2) Who has in writing waived notice of the hearing;

(3) Who actually appears at the hearing;

(4) Whose existence, relationship to the alleged incompetent, or whereabouts is unknown and cannot by the exercise of reasonable diligence be ascertained.

(b) Except as provided in subsection (a) of this section, before the court may order sterilization, notice of the hearing shall be served, at least twenty (20) days before the date set for the hearing, upon the following:

(1) The alleged incompetent if over fourteen (14) years of age;

(2) The parents of the alleged incompetent if the alleged incompetent is a minor;

(3) The spouse, if any, of the alleged incompetent;

(4) Any person who is a guardian of the person of the alleged incompetent or any other person who has the care and custody of the alleged incompetent;

(5) If there is neither known parent nor known spouse, at least one (1) of the nearest competent relatives by blood or marriage of the alleged incompetent;

(6) As directed by the court, any department, bureau, agency, institution, or political subdivision of the United States or of this state or any charitable organization which has or may be charged with the supervision, custody, control, or care of the alleged incompetent; and

(7) Any other person designated by the court.

(c)(1) If the incompetent is over fourteen (14) years of age, there shall be personal service upon him or her if personal service can be had.

(2) Service on others shall be had in accordance with § 28-1-112.

History. Acts 1971, No. 433, ch. 5, § 1;
A.S.A. 1947, § 59-501.

20-49-204. Hearing.

(a)(1) In determining the incompetence of a person for whom sterilization is sought, the court shall require that the evidence of incompetence include the testimony of at least two (2) medical witnesses who shall be found by the court to be qualified. The testimony of one (1) witness may be by written statement.

(2) If the alleged incompetent is confined or undergoing treatment in an institution for the treatment of mental or nervous diseases or a hospital or a penal institution, one (1) of the medical witnesses shall be a member of the medical staff of the hospital or institution.

(3) The court in its discretion may appoint one (1) or more qualified medical examiners to examine the alleged incompetent and report to the court under oath their findings with respect to the incompetent. The report shall be considered with other evidence in the case.

(4) The court shall fix the fees to be paid the examiners, which shall be charged as part of the costs of the proceeding.

(b) The alleged incompetent shall be entitled to appear at the hearing unless two (2) qualified medical witnesses certify to the court that his or her appearance would result in extreme danger to himself or herself and others, to be represented by legal counsel, to present witnesses, to cross-examine witnesses, and otherwise to defend against the statements and allegations of the petition as in other cases at law or in equity.

(c) The court in its order shall set forth in writing separate findings as to each of the statements and allegations contained in the petition.

(d) A complete and written record shall be made and kept of all proceedings under this chapter.

(e)(1) The costs of the proceeding shall be paid by the petitioner.

(2) The petitioner may be reimbursed for costs out of the estate of the alleged incompetent, as ordered by the court.

History. Acts 1971, No. 433, ch. 5, § 1;
A.S.A. 1947, § 59-501.

20-49-205. Method of sterilization.

If the petition is granted, the court may order that the incompetent be sterilized by X ray or by vasectomy, in the case of a male incompetent, or salpingectomy, in the case of a female incompetent, or other procedure as at the time may constitute a procedure generally accepted by the medical profession, by a licensed medical practitioner at a licensed hospital.

History. Acts 1971, No. 433, ch. 5, § 1;
A.S.A. 1947, § 59-501.

20-49-206. Appeal.

An order for sterilization may be appealed from as in other cases at law or in equity, and no such order shall be executed during the time that an appeal may be taken or while an appeal is pending.

History. Acts 1971, No. 433, ch. 5, § 1;
A.S.A. 1947, § 59-501.

20-49-207. Nonliability of physician or hospital.

(a) No action shall be brought against any licensed hospital or its governing body, the members thereof, or its superintendent, administrator, agents, representatives, servants, or employees nor against any physician, nurse, or other person who participates in the performance of a sterilization procedure pursuant to and in compliance with a court order issued under the provisions of this chapter.

(b) Nothing contained in this section is intended to exempt from liability any physician, nurse, or other person who, in his or her acts or omissions to act, is found to have failed to observe the standard of care prescribed by law.

History. Acts 1971, No. 433, ch. 5, § 1;
A.S.A. 1947, § 59-501.

SUBCHAPTER 3 — STERILIZATION PURSUANT TO MEDICAL CERTIFICATION

SECTION.

20-49-301. Request by parent or guardian.

20-49-302. Certificate required.

20-49-303. Performance in licensed hospital required.

SECTION.

20-49-304. Performance not mandatory — Liability.

Publisher's Notes. This subchapter was held unconstitutional in *McKinney v. McKinney*, 305 Ark. 13, 805 S.W.2d 66 (1991).

Effective Dates. Acts 1971, No. 433, ch. 10, § 4: Mar. 29, 1971. Emergency

clause provided: "It is hereby found and determined by the General Assembly that the various mental health laws have been enacted over a period of one hundred years and are not properly organized so that they can be easily found; that many

of these laws are antiquated and archaic and are in great need of updating in order to be useful; that the mental health laws need to be placed in a comprehensive code for easy reference by those persons interested in and who use these laws; and that only by the immediate passage of this Act

can this be achieved. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall become effective from and after its passage and approval.”

CASE NOTES

ANALYSIS

Constitutionality.
Mentally incompetent.

Constitutionality.

None of the statutory procedures under §§ 20-49-301 to 20-49-304 mentions any notice to be provided an incompetent, any suggestion an incompetent is entitled to counsel, any opportunity for the incompetent to be heard as to the need for sterilization, or any right to cross-examine those seeking the incompetent’s steriliza-

tion. In sum, this procedure falls far short of the minimum requirements of procedural due process and §§ 20-49-301 to 20-49-304 are unconstitutional. *McKinney v. McKinney*, 305 Ark. 13, 805 S.W.2d 66 (1991).

Mentally Incompetent.

The mentally incompetent’s condition justifies a requirement of the utmost procedural protection for anyone subjected to involuntary sterilization. *McKinney v. McKinney*, 305 Ark. 13, 805 S.W.2d 66 (1991).

20-49-301. Request by parent or guardian.

(a) Notwithstanding any of the provisions of subchapter 2 of this chapter and as an alternative provision to the probate court directives as described in subchapter 2 of this chapter, it is recognized that obvious hardship and environmental circumstances truly negate the protective measures intended in those sections.

(b) It shall be considered lawful for a legal guardian, in the case of an adult judged to be incompetent, or a parent or guardian, in the case of a minor judged to be incompetent, to seek sterilization for their charges through direct medical channels.

(c) An “incompetent” shall mean a person so defined in § 20-49-101(3) who resides in the state.

History. Acts 1971, No. 433, ch. 5, § 2; A.S.A. 1947, § 59-502.

20-49-302. Certificate required.

(a)(1) Before any sterilization procedure will be performed by a doctor of medicine, there must be filed with the approved hospital where the sterilization procedure is to be performed the certificate of three (3) doctors of medicine not engaged jointly in private practice. One (1) of the doctors shall be the person performing the sterilization, and the others shall be psychiatrists.

(2) The certificate shall state that the doctors of medicine have examined the incompetent and certify in writing that the element of

incompetence, as defined in § 20-49-101(3), is truly present and that they believe a sterilizing procedure is justified.

(b) The sterilization committee of the licensed hospital shall review the certified statements of the three (3) physicians and approve or disapprove the request.

History. Acts 1971, No. 433, ch. 5, § 2;
A.S.A. 1947, § 59-502.

20-49-303. Performance in licensed hospital required.

Sterilization procedures may be performed only in a hospital licensed by the State Board of Health and accredited by the Joint Commission on Accreditation of Hospitals.

History. Acts 1971, No. 433, ch. 5, § 2;
A.S.A. 1947, § 59-502.

20-49-304. Performance not mandatory — Liability.

(a)(1) No person shall be required to perform or participate in a sterilizing procedure.

(2) The refusal of any person to perform or participate in a sterilizing procedure shall not be a basis for civil liability to any person nor a basis for any disciplinary or any other recriminatory action against him or her.

(b)(1) No hospital, hospital director, sterilization committee, or governing board shall be required to permit sterilization within its institution.

(2) The refusal to permit the procedures shall not be grounds for civil liability to any person nor a basis for any disciplinary or other recriminatory action by the state or any person.

(c) Nothing contained in this section is intended to exempt from liability any physician, nurse, or other person who, in his or her acts or omission to act, is found to have failed to observe the standard of care prescribed by law.

History. Acts 1971, No. 433, ch. 5, § 2;
A.S.A. 1947, § 59-502.

CHAPTER 50

INTERSTATE COMPACT ON MENTAL HEALTH

SECTION.

- 20-50-101. Enactment of compact.
20-50-102. Compact administrator —
Powers and duties.
20-50-103. Supplementary agreements.

SECTION.

- 20-50-104. Payments.
20-50-105. Transfer of persons.
20-50-106. Copies of chapter transmitted
to other jurisdictions.

Publisher’s Notes. Acts 1971, No. 433, § 1, provided: “It is hereby found and determined by the General Assembly that the laws relating to the State Hospital, mental health, and mentally ill persons have been enacted piecemeal over a period of many years and that a great number of these laws are duplicating, conflicting, outmoded, and in urgent need of clarification and codification. It is the purpose and intent of the General Assembly in enacting this Act to clarify, update, and codify the various laws of the State relating to the State Hospital, mental health, and mentally ill persons.”

Acts 1971, No. 433, ch. 10, § 1, provided: “It is the specific intent of the codification of the mental health laws contained in this Act to only effect those laws pertaining to mental health. Nothing in this Act shall be deemed to repeal or modify the provisions of Act 411 of 1955. No other laws shall be affected in any manner, nor shall the inclusion of such

laws within this code in any way repeal or affect those laws as they otherwise apply.”

Effective Dates. Acts 1971, No. 433, ch. 10, § 4: Mar. 29, 1971. Emergency clause provided: “It is hereby found and determined by the General Assembly that the various mental health laws have been enacted over a period of one hundred years and are not properly organized so that they can be easily found; that many of these laws are antiquated and archaic and are in great need of updating in order to be useful; that the mental health laws need to be placed in a comprehensive code for easy reference by those persons interested in and who use these laws; and that only by the immediate passage of this Act can this be achieved. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall become effective from and after its passage and approval.”

20-50-101. Enactment of compact.

The Interstate Compact on Mental Health is enacted into law and entered into by this state with all other states legally joining therein in the form substantially as follows:

ARTICLE I

The party states find that the proper and expeditious treatment of the mentally ill and mentally deficient can be facilitated by cooperative action, to the benefit of the patients, their families, and society as a whole. Further, the party states find that the necessity of and desirability for furnishing such care and treatment bears no primary relation to the residence or citizenship of the patient but that, on the contrary, the controlling factors of community safety and humanitarianism require that facilities and services be made available for all who are in need of them. Consequently, it is the purpose of this compact and of the party states to provide the necessary legal basis for the institutionalization or other appropriate care and treatment of the mentally ill and mentally deficient under a system that recognizes the paramount importance of patient welfare and to establish the responsibilities of the party states in terms of such welfare.

ARTICLE II

(a) “Sending state” shall mean a party state from which a patient is transported pursuant to the provisions of the compact or from which it is contemplated that a patient may be so sent.

(b) "Receiving state" shall mean a party state to which a patient is transported pursuant to the provisions of the compact or to which it is contemplated that a patient may be so sent.

(c) "Institution" shall mean any hospital or other facility maintained by a party state or political subdivision thereof for the care and treatment of mental illness or mental deficiency.

(d) "Patient" shall mean any person subject to or eligible as determined by the laws of the sending state for institutionalization or other care, treatment, or supervision pursuant to the provisions of this compact.

(e) "After-care" shall mean care, treatment, and services provided a patient, as defined herein, on convalescent status or conditional release.

(f) "Mental illness" shall mean mental disease to such extent that a person so afflicted requires care and treatment for his own welfare, or the welfare of others, or of the community.

(g) "Mental deficiency" shall mean mental deficiency as defined by appropriate clinical authorities to such extent that a person so afflicted is incapable of managing himself and his affairs, but shall not include mental illness as defined herein.

(h) "State" shall mean any state, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

ARTICLE III

(a) Whenever a person physically present in any party state shall be in need of institutionalization by reason of mental illness or mental deficiency, he shall be eligible for care and treatment in an institution in that state irrespective of his residence, settlement, or citizenship qualifications.

(b) The provisions of paragraph (a) of this Article to the contrary notwithstanding, any patient may be transferred to an institution in another state whenever there are factors based upon clinical determinations indicating that the care and treatment of said patient would be facilitated or improved thereby. Any such institutionalization may be for the entire period of care and treatment or for any portion or portions thereof. The factors referred to in this paragraph shall include the patient's full record with due regard for the location of the patient's family, character of the illness and probable duration thereof, and such other factors as shall be considered appropriate.

(c) No state shall be obliged to receive any patient pursuant to the provisions of paragraph (b) of this Article unless the sending state has given advance notice of its intention to send the patient, furnished all available medical and other pertinent records concerning the patient, given the qualified medical or other appropriate clinical authorities of the receiving state an opportunity to examine the patient if said authorities so wish, and unless the receiving state shall agree to accept the patient.

(d) In the event that the laws of the receiving state establish a system of priorities for the admission of patients, an interstate patient

under this compact shall receive the same priority as a local patient and shall be taken in the same order and at the same time that he would be taken if he were a local patient.

(e) Pursuant to this compact, the determination as to the suitable place of institutionalization for a patient may be reviewed at any time and such further transfer of the patient may be made as seems likely to be in the best interest of the patient.

ARTICLE IV

(a) Whenever, pursuant to the laws of the state in which a patient is physically present, it shall be determined that the patient should receive after-care or supervision, such care or supervision may be provided in a receiving state. If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state shall have reason to believe that after-care in another state would be in the best interest of the patient and would not jeopardize the public safety, they shall request the appropriate authorities in the receiving state to investigate the desirability of affording the patient such after-care in said receiving state, and such investigation shall be made with all reasonable speed. The request for investigation shall be accompanied by complete information concerning the patient's intended place of residence and the identity of the person in whose charge it is proposed to place the patient, the complete medical history of the patient, and such other documents as may be pertinent.

(b) If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state and the appropriate authorities in the receiving state find that the best interest of the patient would be served thereby, and if the public safety would not be jeopardized thereby, the patient may receive after-care or supervision in the receiving state.

(c) In supervising, treating, or caring for a patient on after-care pursuant to the terms of this article, a receiving state shall employ the same standards of visitation, examination, care, and treatment that it employs for similar local patients.

ARTICLE V

Whenever a dangerous or potentially dangerous patient escapes from an institution in any party state, that state shall promptly notify all appropriate authorities within and without the jurisdiction of the escape in a manner reasonably calculated to facilitate the speedy apprehension of the escapee. Immediately upon the apprehension and identification of any such dangerous or potentially dangerous patient, he shall be detained in the state where found pending disposition in accordance with law.

ARTICLE VI

The duly accredited officers of any state party to this compact, upon the establishment of their authority and identity of the patient, shall be permitted to transport any patient being moved pursuant to this

compact through any and all states party to this compact, without interference.

ARTICLE VII

(a) No person shall be deemed a patient of more than one (1) institution at any given time. Completion of transfer of any patient to an institution in a receiving state shall have the effect of making the person a patient of the institution in the receiving state.

(b) The sending state shall pay all costs of and incidental to the transportation of any patient pursuant to this compact, but any two (2) or more party states may, by making a specific agreement for that purpose, arrange for a different allocation of costs as among themselves.

(c) No provision of this compact shall be construed to alter or affect any internal relationships among the departments, agencies, and officers of and in the government of a party state or between a party state and its subdivisions, as to payment of costs or responsibilities therefor.

(d) Nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency, or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to any provision of this compact.

(e) Nothing in this compact shall be construed to invalidate any reciprocal agreement between a party state and a nonparty state relating to institutionalization, care, or treatment of the mentally ill or mentally deficient, or any statutory authority pursuant to which such agreements may be made.

ARTICLE VIII

(a) Nothing in this compact shall be construed to abridge, diminish, or in any way impair the rights, duties, and responsibilities of any patient's guardian on his own behalf or in respect of any patient for whom he may serve, except that where the transfer of any patient to another jurisdiction makes advisable the appointment of a supplemental or substitute guardian, any court of competent jurisdiction in the receiving state may make such supplemental or substitute appointment and the court which appointed the previous guardian shall upon being duly advised of the new appointment, and upon the satisfactory completion of such accounting and other acts as such court may by law require, relieve the previous guardian of power and responsibility to whatever extent shall be appropriate in the circumstances, provided, however, that in the case of any patient having settlement in the sending state, the court of competent jurisdiction in the sending state shall have the sole discretion to relieve a guardian appointed by it or continue his power and responsibility, whichever it shall deem advisable. The court in the receiving state may, in its discretion, confirm or reappoint the person or persons previously serving as guardian in the

sending state in lieu of making a supplemental or substitute appointment.

(b) The term "guardian" as used in paragraph (a) of this Article shall include any guardian, trustee, legal committee, conservator, or other person or agency however denominated who is charged by law with power to act for or responsibility for the person or property of a patient.

ARTICLE IX

(a) No provision of this compact except Article V shall apply to any person institutionalized while under sentence in a penal or correctional institution or while subject to trial on a criminal charge, or whose institutionalization is due to the commission of an offense for which, in the absence of mental illness or mental deficiency, said person would be subject to incarceration in a penal or correctional institution.

(b) To every extent possible, it shall be the policy of states party to this compact that no patient shall be placed or detained in any prison, jail, or lockup, but such patient shall, with all expedition, be taken to a suitable institutional facility for mental illness or mental deficiency.

ARTICLE X

(a) Each party state shall appoint a "compact administrator" who, on behalf of his state, shall act as general coordinator of activities under the compact in his state and who shall receive copies of all reports, correspondence, and other documents relating to any patient processed under the compact by his state either in the capacity of sending or receiving state. The compact administrator or his duly designated representative shall be the official with whom other party states shall deal in any matter relating to the compact or any patient processed thereunder.

(b) The compact administrator of the respective party states shall have power to promulgate reasonable rules and regulations to carry out more effectively the terms and provisions of this compact.

ARTICLE XI

The duly constituted administrative authorities of any two (2) or more party states may enter into supplementary agreements for the provision of any service or facility or for the maintenance of any institution on a joint or cooperative basis whenever the states concerned shall find that such agreements will improve services, facilities, or institutional care and treatment in the fields of mental illness or mental deficiency. No such supplementary agreement shall be construed so as to relieve any party state of any obligation which it otherwise would have under other provisions of this compact.

ARTICLE XII

This compact shall enter into full force and effect as to any state when enacted by it into law and such state shall thereafter be a party thereto with any and all states legally joining therein.

ARTICLE XIII

(a) A state party to this compact may withdraw therefrom by enacting a statute repealing the same. Such withdrawal shall take effect one (1) year after notice thereof has been communicated officially and in writing to the governors and compact administrators of all other party states. However the withdrawal of any state shall not change the status of any patient who has been sent to said state or sent out of said state pursuant to the provision of the compact.

(b) Withdrawal from any agreement permitted by Article VII (b) as to costs or from any supplementary agreement made pursuant to Article XI shall be in accordance with the terms of such agreement.

ARTICLE XIV

The compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of the compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

History. Acts 1971, No. 433, ch. 9, § 1;
A.S.A. 1947, § 59-801.

20-50-102. Compact administrator — Powers and duties.

(a) Pursuant to this compact, the Director of the Division of Mental Health Services of the Department of Human Services, or his designee, shall be the compact administrator and, acting jointly with like officers of other party states, shall have power to promulgate rules and regulations to carry out more effectively the terms of the compact.

(b) The compact administrator is authorized, empowered, and directed to cooperate with all departments, agencies, and officers of and in the government of this state and its subdivisions in facilitating the proper administration of the compact or any supplementary agreements entered into by this state thereunder.

History. Acts 1971, No. 433, ch. 9, § 2;
A.S.A. 1947, § 59-802; Acts 1995, No. 829,
§ 1.

20-50-103. Supplementary agreements.

(a) The compact administrator is authorized and empowered to enter into supplementary agreements with appropriate officials of other states pursuant to Articles VII and XI of the compact.

(b) In the event that supplementary agreements shall require or contemplate the use of any institution or facility of this state, or require or contemplate the provision of any service by this state, no such agreements shall have force or effect until approved by the head of the department or agency under whose jurisdiction those institutions or facilities are operated or whose department or agency will be charged with the rendering of such service.

History. Acts 1971, No. 433, ch. 9, § 3;
A.S.A. 1947, § 59-803.

20-50-104. Payments.

The compact administrator, subject to the approval of the Chief Fiscal Officer of the State, may make or arrange for any payments necessary to discharge any financial obligations imposed upon this state by the compact or by any supplementary agreement entered into thereunder.

History. Acts 1971, No. 433, ch. 9, § 4;
A.S.A. 1947, § 59-804.

20-50-105. Transfer of persons.

The compact administrator is directed to consult with the immediate family of any proposed transferee and, in the case of a proposed transferee from an institution in this state to an institution in another party state, to take no final action without approval of the circuit court, if the proposed transferee was committed by such court.

History. Acts 1971, No. 433, ch. 9, § 5;
A.S.A. 1947, § 59-805.

20-50-106. Copies of chapter transmitted to other jurisdictions.

Authorized copies of this chapter shall, upon its approval, be transmitted by the Secretary of State to the Governor of each state, the Attorney General, and the Secretary of State of the United States, and the Council of State Governments.

History. Acts 1971, No. 433, ch. 9, § 6;
A.S.A. 1947, § 59-806.

CHAPTERS 51-55

[Reserved]

SUBTITLE 4. FOOD, DRUGS, AND COSMETICS**CHAPTER 56****GENERAL PROVISIONS****SUBCHAPTER.**

1. GENERAL PROVISIONS. [RESERVED.]
2. FOOD, DRUG, AND COSMETIC ACT.

SUBCHAPTER 1 — GENERAL PROVISIONS

[Reserved]

SUBCHAPTER 2 — FOOD, DRUG, AND COSMETIC ACT**SECTION.**

- 20-56-201. Title.
- 20-56-202. Definitions.
- 20-56-203. Applicability.
- 20-56-204. Notice of minor violations.
- 20-56-205. Penalties — Exceptions.
- 20-56-206. Duty of prosecuting attorney.
- 20-56-207. Injunctions authorized.
- 20-56-208. Adulterated food.
- 20-56-209. Misbranded food.
- 20-56-210. Adulterated drug or device.
- 20-56-211. Misbranded drug or device.
- 20-56-212. Adulterated cosmetic.
- 20-56-213. Misbranded cosmetic.
- 20-56-214. False or misleading advertisement.
- 20-56-215. Prohibited acts.
- 20-56-216. Adulterated, misbranded, or abandoned food, drug, de-

SECTION.

- vice, or cosmetic — Procedures.
- 20-56-217. Contamination with microorganisms.
- 20-56-218. Poisonous or deleterious substance — Regulations for use.
- 20-56-219. State Board of Health — Authority to regulate.
- 20-56-220. State Board of Health — Inspection.
- 20-56-221. State Board of Health — Publication and dissemination of information.
- 20-56-222. State Board of Health — Enforcement of subchapter.
- 20-56-223. State Board of Health — Enforcement of federal law.

Cross References. Poison Control — Drug Information — Toxicological Laboratory Services, § 20-13-501 et seq.

Effective Dates. Acts 1953, No. 415, § 26: Mar. 30, 1953. Emergency clause provided: "It has been found and is declared by the General Assembly of Arkansas that under the present laws Arkansas processed products cannot be sold in out-of-state markets without question; that processors placing on the market excellent goods are unable to have an unquestioned sale on account of the products of a minority of inferior processors; that there is an

urgent need for providing legal protection to the processors of high quality products. Now, therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health and safety shall take effect and be in force from the date of its approval."

Acts 1977, No. 938, § 4: Mar. 31, 1977. Emergency clause provided: "It is hereby found and determined by the General Assembly that the proper, complete and accurate labeling of regulated drugs is of great concern and vital importance to the health, welfare, and safety of Arkansas

citizens and that this Act is immediately necessary to assure that proper labeling of such drugs. Therefore, an emergency is hereby declared to exist and this Act being

necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

RESEARCH REFERENCES

ALR. Sufficiency of evidence to support product misuse defense in products liability action concerning food, drugs and other products intended for ingestion. 58 ALR 4th 7.

Sufficiency of evidence to support product misuse defense in products liability action concerning cosmetics and other personal care products. 58 ALR 4th 40.

Liability for injury or death caused by spoilage or contamination of beverage. 87 ALR 4th 804.

Liability for injury or death allegedly caused by foreign substance in beverage. 90 ALR 4th 12.

Liability for injury or death allegedly caused by foreign object in food or food product. 1 ALR 5th 1.

Liability for injury or death allegedly caused by food product containing object

related to, but not intended to be present in, product. 2 ALR 5th 189.

Liability for injury or death allegedly caused by spoilage, contamination, or other deleterious condition of food or food product. 2 ALR 5th 1.

Liability of manufacturer or seller for injury or death allegedly caused by use of contraceptive. 54 ALR 5th 1.

Am. Jur. 25 Am. Jur. 2d, Drugs, § 17 et seq.

35 Am. Jur. 2d, Food, § 1 et seq.

Ark. L. Rev. Case Notes — Trade Regulations — Foods, Drugs and Cosmetics — Economic Adulteration, 11 Ark. L. Rev. 442.

C.J.S. 28 C.J.S., Supp., Drugs, § 8 et seq.

36A C.J.S., Food, § 3 et seq.

20-56-201. Title.

This subchapter may be cited as the "Food, Drug, and Cosmetic Act".

History. Acts 1953, No. 415, § 1; A.S.A. 1947, § 82-1101.

20-56-202. Definitions.

As used in this subchapter, unless the context otherwise requires:

- (1) The term "board" means the State Board of Health;
- (2) The term "person" includes an individual, partnership, corporation, or association;
- (3) The term "food" means:
 - (A) Articles used for food or drink for man or other animals;
 - (B) Chewing gum; and
 - (C) Articles used for components of any such article;
- (4) The term "drug" means:
 - (A) Articles recognized in the official *United States Pharmacopoeia*, the official *Homeopathic Pharmacopoeia of the United States*, the official *National Formulary*, or in any supplement to any of them;
 - (B) Articles intended for use in diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;

(C) Articles other than food intended to affect the structure or any function of the body of man or other animals; and

(D) Articles intended for use as a component of any article specified in subdivisions (4)(A)-(C) of this section;

but does not include devices or their components, parts, or accessories;

(5) The term "device", except when used in subdivision (10)(B) of this section, and in §§ 20-56-209(6), 20-56-211(3), 20-56-213(3), and 20-56-215, means instruments, apparatus, and contrivances, including their components, parts, and accessories which are intended:

(A) For use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; or

(B) To affect the structure or any function of the body of man or other animals;

(6) The term "cosmetic" means:

(A) Articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance; and

(B) Articles intended for use as a component of any such articles, except that the term shall not include soap;

(7) The term "official compendium" means the official *United States Pharmacopoeia*, the official *Homeopathic Pharmacopoeia of the United States*, the official *National Formulary*, or any supplement to any of them;

(8) The term "label" means a display of written, printed, or graphic matter upon the immediate container of any article. A requirement made by or under authority of this subchapter that any word, statement, or other information appear on the label shall not be considered to be complied with unless the word, statement, or other information also appears on the outside container or wrapper, if there is any, of the retail package of the article, or is easily legible through the outside container or wrapper;

(9) The term "immediate container" does not include package liners;

(10)(A) The term "labeling" means all labels and other written, printed, or graphic matter upon an article or any of its containers or wrappers, or accompanying the article.

(B) If any article is alleged to be misbranded because the labeling is misleading, or if an advertisement is alleged to be false because it is misleading, then, in determining whether the labeling or advertisement is misleading, there shall be taken into account, among other things, not only representations made or suggested by statement, word, design, device, sound, or in any combination thereof, but also the extent to which the labeling or advertisement fails to reveal facts material in the light of the representations or material with respect to consequences which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement thereof or under such conditions of use as are customary or usual;

(11) The term "advertisement" means all representations disseminated in any manner, or by any means other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of food, drugs, devices, or cosmetics;

(12) The representation of a drug, in its labeling or advertisement, as an antiseptic shall be considered to be a representation that it is a germicide except in the case of a drug purporting to be, or represented as, an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder, or other use which involves prolonged contact with the body;

(13) The term "new drug" means:

(A) Any drug the composition of which is such that the drug is not generally recognized among experts who are qualified by scientific training and experience to evaluate the safety of drugs as safe for use under the conditions prescribed, recommended, or suggested in the labeling thereof; or

(B) Any drug the composition of which is such that the drug, as a result of investigations to determine its safety for use under such conditions, has become so recognized, but which has not, otherwise than in such investigations, been used to a material extent or for a material time under such conditions;

(14) The term "contaminated with filth" applies to any food, drug, device, or cosmetic not securely protected from dust, dirt, and, as far as may be necessary and by all reasonable means, from all foreign or injurious contaminations;

(15) The term "federal act" means the federal Food, Drug, and Cosmetic Act;

(16) The term "human growth hormone" means somatrem, somatropin, or an analogue of either of them;

(17) The term "counterfeit substance" means a drug which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, or device, or any likeness thereof, of a drug manufacturer, processor, packer, or distributor other than the person or persons who, in fact, manufactured, processed, packed, or distributed the drug and which thereby falsely purports, or is represented, to be the product of, or to have been packed or distributed by, another drug manufacturer, processor, packer, or distributor;

(18) The term "human growth hormone" includes both cadaver source and biosynthetic human growth hormones;

(19) "Abandoned drug" means a drug which:

(A) Is in the possession or control of a person who is without authority under law to possess, purchase, or sell;

(B) In its present circumstances presents a danger to the public health or safety;

(C) Is not properly controlled by the person who by law has authority to possess, purchase, or sell the drug;

(D) Is the subject of a recall order by the federal Food and Drug Administration but has not been returned within a reasonable time after the publication of that order;

(E) Is adulterated, misbranded, or a new drug as defined in this subchapter or a drug intended solely for investigational use and approved by the federal Food and Drug Administration as such for which there is no approval in effect; or

(F) Is otherwise rendered unsafe for use as a result of fire, flood, or other natural disaster.

History. Acts 1953, No. 415, § 2; A.S.A. 1947, § 82-1102; Acts 1989, No. 249, § 1; 1991, No. 569, § 1; 1991, No. 924, § 1.

U.S. Code. The Food, Drug, and Cosmetic Act referred to in this section is codified as 21 U.S.C. § 301 et seq.

20-56-203. Applicability.

The provisions of this subchapter regarding the selling of food, drugs, devices, or cosmetics shall be considered to include the manufacture, production, processing, packing, exposure, offer, possession, and holding of any such article for sale and includes the sale, dispensing, and giving of any such article and the supplying or applying of the articles in the conduct of any food, drug, or cosmetic establishment.

History. Acts 1953, No. 415, § 2; A.S.A. 1947, § 82-1102.

20-56-204. Notice of minor violations.

Nothing in this subchapter shall be construed as requiring the State Board of Health to report for the institution of proceedings under this subchapter any minor violations of this subchapter whenever the board believes that the public interest will be adequately served under the circumstances by a suitable written notice or warning to the violators.

History. Acts 1953, No. 415, § 8; A.S.A. 1947, § 82-1108.

20-56-205. Penalties — Exceptions.

(a) Any person who violates any of the provisions of this subchapter shall be guilty of a misdemeanor and for such offense shall, upon conviction, be fined an amount not to exceed five hundred dollars (\$500), or shall be sentenced to not more than one (1) year's imprisonment, or both fine and imprisonment, in the discretion of the court. For each subsequent offense and conviction thereof, the person shall be fined not less than one thousand dollars (\$1,000) or sentenced to one (1) year's imprisonment, or both fine and imprisonment, in the discretion of the court.

(b) No person shall be subject to the penalties of subsection (a) of this section for having violated § 20-56-215(1) or (3) if he or she establishes a guaranty or undertaking, signed by and containing the name and address of the person residing in the State of Arkansas from whom he or she received in good faith the article, to the effect that the article is

not adulterated or misbranded within the meaning of this subchapter and designating this subchapter.

(c) No publisher, radio broadcast licensee, or agency or medium for the dissemination of an advertisement, but not including the manufacturer, packer, distributor, or seller of the article to which a false advertisement relates, shall be liable under this section by reason of the dissemination by him, her, or it of the false advertisement unless he, she, or it has refused, on the request of the State Board of Health, to furnish the board the name and post office address of the manufacturer, packer, distributor, seller, or advertising agency residing in the State of Arkansas who caused him, her, or it to disseminate the advertisement.

(d)(1) Except as provided in subdivision (2) of this subsection, any person who distributes or possesses with intent to distribute any human growth hormone or counterfeit substance purporting to be a human growth hormone for any use in humans other than the treatment of disease pursuant to the order of a physician shall be deemed guilty of a Class D felony.

(2) Any person who distributes or possesses with the intent to distribute to an individual under eighteen (18) years of age, any human growth hormone or counterfeit substance purporting to be a human growth hormone for any use in humans other than the treatment of disease pursuant to the order of a physician shall be deemed guilty of a Class C felony.

(3) Possession by any person of more than two hundred (200) capsules or tablets or more than sixteen cubic centimeters (16cc.) of human growth hormones or counterfeit substance purporting to be a human growth hormone shall create a rebuttable presumption that the person possesses such substances with the intent to deliver in violation of this subsection. Provided, however, this presumption may be overcome by the submission of evidence sufficient to create a reasonable doubt that the person charged possessed the substance with intent to deliver.

History. Acts 1953, No. 415, § 5;
A.S.A. 1947, § 82-1105; Acts 1989, No.
249, § 2; 1991, No. 569, § 2.

20-56-206. Duty of prosecuting attorney.

It shall be the duty of each prosecuting attorney to whom the State Board of Health reports any violation of this subchapter to cause appropriate proceedings to be instituted in the proper courts without delay and to be prosecuted in the manner required by law.

History. Acts 1953, No. 415, § 7;
A.S.A. 1947, § 82-1107.

20-56-207. Injunctions authorized.

In addition to the remedies provided in § 20-56-205, the State Board of Health is authorized to apply to the proper circuit court for, and the court shall have jurisdiction, upon hearing and for cause shown, to grant a temporary or permanent injunction restraining any person from violating any provision of § 20-56-215, whether or not there exists an adequate remedy at law.

History. Acts 1953, No. 415, § 4; cuit courts, Ark. Const. Amend. 80, §§ 6, A.S.A. 1947, § 82-1104.

Cross References. Jurisdiction of cir-

20-56-208. Adulterated food.

A food shall be deemed to be adulterated:

(1)(A) If it bears or contains any poisonous or deleterious substance which may render it injurious to health. However, if the substance is not an added substance, the food shall not be considered adulterated under this subdivision if the quantity of the substance in the food does not ordinarily render it injurious to health;

(B) If it bears or contains any added poisonous or added deleterious substance which is unsafe within the meaning of § 20-56-218;

(C) If it consists in whole or in part of a diseased, contaminated, filthy, putrid, or decomposed substance, or if it is otherwise unfit for food;

(D) If it has been produced, prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered diseased, unwholesome, or injurious to health;

(E) If it is the product of a diseased animal or an animal which has died otherwise than by slaughter, or that has been fed upon the uncooked offal of other animals; or

(F) If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;

(2)(A) If any valuable constituent has been in whole or in part omitted or abstracted therefrom;

(B) If any substance has been substituted wholly or in part therefor;

(C) If damage or inferiority has been concealed in any manner; or

(D) If any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, to reduce its quality or strength, or to make it appear better or of greater value than it is;

(3) If it is confectionery and it bears or contains any alcohol or nonnutritive article or substance except harmless coloring, harmless flavoring, harmless resinous glaze not in excess of four-tenths of one percent ($\frac{4}{10}$ of 1%), harmless natural wax not in excess of four-tenths of one percent ($\frac{4}{10}$ of 1%), harmless natural gum, and pectin. However, this subdivision shall not apply to any confectionery by reason of its

containing less than one-half of one percent ($\frac{1}{2}$ of 1%) by volume of alcohol derived solely from the use of flavoring extracts, or to any chewing gum by reason of its containing harmless nonnutritive masticatory substances; or

(4) If it bears or contains a coal tar color other than one from a batch which has been certified under authority of the federal Food, Drug, and Cosmetic Act.

History. Acts 1953, No. 415, § 10; A.S.A. 1947, § 82-1110.

U.S. Code. The Federal Food, Drug, and Cosmetic Act, referred to in subdivision (4), is codified as 21 U.S.C. § 301 et seq.

CASE NOTES

ANALYSIS

Constitutionality.
Economic adulteration.
Hearing.
Particular products.
Regulations.

Constitutionality.

Subdivision (2)(D) is not too vague to be enforced. *Herron v. Arkansas Whsle. Grocers Ass'n*, 227 Ark. 156, 296 S.W.2d 409 (1956).

Economic Adulteration.

Subdivision (2)(D) of this section is intended to prevent "economic adulteration," which makes a product, although not deleterious, appear to be better or more valuable than is actually the case. *Herron v. Arkansas Whsle. Grocers Ass'n*, 227 Ark. 156, 296 S.W.2d 409 (1956).

Hearing.

Hearing before health officer was not prerequisite to prosecution in circuit court. *Meyer v. State*, 218 Ark. 440, 236 S.W.2d 996 (1951) (decision under prior law).

Particular Products.

When horsemeat was used in manufacture of products recognized as hamburger,

bologna, wieners, and frankfurters, the products were adulterated unless products were openly held out to be horsemeat. *Meyer v. State*, 218 Ark. 440, 236 S.W.2d 996 (1951) (decision under prior law).

A product composed of carmelized starch and calcium phosphate which was designed for use in coffee to increase the amount of water in relation to the amount of coffee in preparation of liquid coffee and which was shown not to be harmful or deleterious in the quantities suggested was not adulterated within the meaning of this section. *Austin v. Onnes*, 224 Ark. 1041, 278 S.W.2d 93 (1955).

The application of a red wax coating to Irish potatoes violated subdivision (2)(D) of this section, since the use of uncolored wax protected potatoes from deterioration the same as the colored wax. *Herron v. Arkansas Whsle. Grocers Ass'n*, 227 Ark. 156, 296 S.W.2d 409 (1956).

Regulations.

The legislature, having clearly defined the types of the adulteration that are forbidden, could properly authorize the Board of Health to adopt regulations within the scope of this section. *Herron v. Arkansas Whsle. Grocers Ass'n*, 227 Ark. 156, 296 S.W.2d 409 (1956).

20-56-209. Misbranded food.

A food shall be deemed to be misbranded:

- (1) If its labeling is false or misleading in any particular;
- (2) If it is offered for sale under the name of another food;
- (3) If it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word "imitation" and, immediately thereafter, the name of the food imitated;
- (4) If its container is so made, formed, or filled as to be misleading;

(5) If in package form, unless it bears a label containing:

(A) The name and place of business of the manufacturer, packer, or distributor;

(B) An accurate statement of the quantity of the contents in terms of weight, measure, or numerical count, provided that reasonable variations shall be permitted, and exemptions as to small packages shall be established by regulations prescribed by the State Board of Health;

(6) If any word, statement, or other information required by or under authority of this subchapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness, as considered as compared with other words, statements, designs, or devices in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(7) If it purports to be or is represented as a food for which a definition and standard of identity has been prescribed by regulations as provided by § 20-56-219 or by the federal Food, Drug, and Cosmetic Act, unless:

(A) It conforms to the definition and standard; and

(B) Its label bears the name of the food specified in the definition and standard, and, insofar as may be required by regulations, the common names of optional ingredients other than spices, flavoring, and coloring present in the food;

(8) If it purports to be or is represented as:

(A) A food for which a standard of quality has been prescribed by regulations as provided in § 20-56-219 or by the federal Food, Drug, and Cosmetic Act and its quality falls below the standard, unless its label bears, in such manner and form as the regulations specify, a statement that it falls below the standard; or

(B) A food for which a standard of fill of container has been prescribed by regulations as provided by § 20-56-219, and it falls below the standard of fill of container applicable thereto unless its label bears, in such manner and form as the regulations specify, a statement that it falls below the standard;

(9) If it is not subject to the provisions of subdivision (7) of this section, unless it bears labeling clearly giving:

(A) The common or usual name of the food, if there is any; and

(B) In case it is fabricated from two (2) or more ingredients, the common or usual name of each ingredient, except that spices, flavorings, and colorings, other than those sold as such, may be designated as spices, flavorings, and colorings without naming each.

(C) However, to the extent that compliance with the requirements of subdivision (9)(B) of this section is impractical or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the State Board of Health;

(10) If it purports to be or is represented for special dietary uses unless its label bears such information concerning its vitamin, mineral,

and other dietary properties as the board determines to be, and by regulations prescribed as necessary in order to fully inform purchasers as to its value for such uses;

(11) If it bears or contains any artificial flavoring, artificial coloring, or chemical preservative unless it bears labeling stating that fact, provided that to the extent that compliance with the requirements of this subdivision is impracticable, exemptions shall be established by regulations promulgated by the board; and

(12) If it is a product intended as an ingredient of another food and, when used according to the directions of the purveyor, will result in the final food product being adulterated or misbranded.

History. Acts 1953, No. 415, § 11; and Cosmetic Act, referred to subsection A.S.A. 1947, § 82-1111. (7) and subdivision (8)(A), is codified as 21

U.S. Code. The Federal Food, Drug, U.S.C. § 301 et seq.

CASE NOTES

Particular Products.

A product used in coffee to increase the amount of water in relation to the amount of coffee in preparation of liquid coffee and which was shown not to be harmful or

deleterious in the quantities suggested was not misbranded within the meaning of this section. *Austin v. Onnes*, 224 Ark. 1041, 278 S.W.2d 93 (1955).

20-56-210. Adulterated drug or device.

A drug or device shall be deemed to be adulterated:

(1)(A) If it consists in whole or in part of any filthy, putrid, or decomposed substance;

(B) If it has been produced, prepared, packed, or held under insanitary conditions whereby it may have been contaminated with filth or whereby it may have been rendered injurious to health;

(C) If it is a drug and its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health; or

(D) If it is a drug and it bears or contains, for purposes of coloring only, a coal tar color other than one from a batch certified under the authority of the federal Food, Drug, and Cosmetic Act;

(2) If it purports to be or is represented as a drug, the name of which is recognized in an official compendium, and its strength differs from, or its quality or purity falls below, the standard set forth in the compendium. The determination as to strength, quality, or purity of the drug or device shall be made in accordance with the tests or methods of assay set forth in the compendium, or in the absence of or inadequacy of the tests or methods of assay, those prescribed under authority of the federal Food, Drug, and Cosmetic Act. No drug defined in an official compendium shall be deemed to be adulterated under this subdivision because it differs from the standard of strength, quality, or purity set forth in the compendium if its difference in strength, quality, or purity from the standard is plainly stated on its label. Whenever a drug is recognized in both the *United States Pharmacopoeia* and the

Homeopathic Pharmacopoeia of the United States, it shall be subject to the requirements of the *United States Pharmacopoeia* unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the provisions of the *Homeopathic Pharmacopoeia of the United States* and not to those of the *United States Pharmacopoeia*;

(3) If it is not subject to the provisions of subdivision (2) of this section and its strength differs from, or its purity or quality falls below, that which it purports or is represented to possess; or

(4) If it is a drug and any substance has been:

(A) Mixed or packed therewith so as to reduce its quality or strength; or

(B) Substituted wholly or in part therefor.

History. Acts 1953, No. 415, § 14; and Cosmetic Act, referred to subdivision A.S.A. 1947, § 82-1114. (1)(A) and subsection (2), is codified as 21

U.S. Code. The Federal Food, Drug, U.S.C. § 301 et seq.

20-56-211. Misbranded drug or device.

A drug or device shall be deemed to be misbranded:

(1) If its labeling is false or misleading in any particular;

(2) If in package form unless it bears a label containing:

(A) The name and place of business of the manufacturer, packer, or distributor. However, in the case of any drug subject to subdivision (11) of this section, the label shall contain the name and place of business of the manufacturer of the final dosage form of the drug and, if different, the name and place of business of the packer or distributor thereof; and

(B) An accurate statement of the quantity of the contents in terms of weight, measure, or numerical count. Reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the State Board of Health;

(3) If any word, statement, or other information required by or under authority of this subchapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness, as compared with other words, statements, designs, or devices in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(4) If it is for use by man and contains any quantity of narcotic or hypnotic substance, alpha-sucaine, barbituric acid, beta-sucaine, bromal, cannabis, carbromal, chloral, coca, cocaine, codeine, heroin, marijuana, morphine, opium, paraldehyde, peyote, or sulphonmethane, or any chemical derivative of such substances, which derivative has been designated as habit-forming by regulations promulgated under § 502(d) [repealed] of the federal Food, Drug, and Cosmetic Act unless its label bears the name and quantity or proportion of the substance or derivative and in juxtaposition therewith the statement "Warning — May be habit-forming";

(5) If it is a drug and is not designated solely by a name recognized in an official compendium unless its label bears:

(A) The common or usual name of the drug, if there is any; and

(B) In case it is fabricated from two (2) or more ingredients, the common or usual name of each active ingredient, including the kind and quantity or proportion of any alcohol, and also including, whether active or not, the name and quantity or proportion of any bromides, ether, chloroform, acetanilid, acetophenetidin, amidopyrine, antipyrine, atropine, hyoscyne, hyoscyamine, arsenic, digitalis, glucosides, mercury, ouabain, stophanthin, strychnine, thyroid, or any derivative or preparation of any such substances contained therein. However, to the extent that compliance with the requirements of this subdivision is impracticable, exemptions shall be established by regulations promulgated by the board;

(6) Unless its labeling bears:

(A) Adequate directions for use; and

(B) Such adequate warning against use in those pathological conditions or by children where its use may be dangerous to health, or against unsafe dosage or methods or duration of administration or application, in such manner and form as are necessary for the protection of users. However, where any requirement of subdivision (6)(A) of this section as applied to any drug or device is not necessary for the protection of the public health, the board shall promulgate regulations exempting the drug or device from the requirements;

(7) If it purports to be a drug the name of which is recognized in an official compendium, unless it is packaged and labeled as prescribed therein. However, the method of packing may be modified with the consent of the board. Whenever a drug is recognized in both the *United States Pharmacopoeia* and the *Homeopathic Pharmacopoeia of the United States*, it shall be subject to the requirements of the *United States Pharmacopoeia* with respect to packaging and labeling unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the provisions of the *Homeopathic Pharmacopoeia of the United States* and not to those of the *United States Pharmacopoeia*;

(8) If it has been found by the board to be a drug liable to deterioration, unless it is packaged in such form and manner and its label bears a statement of such precautions as the board shall by regulations require as necessary for the protection of public health. No such regulations shall be established for any drug recognized in an official compendium until the board shall have informed the appropriate body charged with the revision of the compendium of the need for the packaging or labeling requirements and the body shall have failed within a reasonable time to prescribe the requirements;

(9)(A) If it is a drug and its container is so made, formed, or filled as to be misleading;

(B) If it is an imitation of another drug; or

(C) If it is offered for sale under the name of another drug;

(10) If it is dangerous to health when used in the dosage or with the frequency or duration prescribed, recommended, or suggested in the labeling thereof; or

(11) If it is a drug other than those covered by Acts 1951, No. 184 [repealed], and intended for use by man which:

(A) Is a habit-forming drug to which subdivision (4) of this section applies;

(B) Because of its toxicity or other potentiality for harmful effect, or the method of use, or the collateral measures necessary to its use, is not safe for use except under the supervision of a physician, dentist, or veterinarian; or

(C) Is limited by an effective application under § 505 [repealed] of the federal Food, Drug, and Cosmetic Act to use under professional supervision by a physician, dentist, or veterinarian unless it is dispensed only:

(i) Upon a written prescription of a physician, dentist, or veterinarian; or

(ii) Upon the oral prescription of a physician, dentist, or veterinarian which is reduced promptly to writing by the pharmacist; or

(iii) By refilling any written or oral prescription if the refilling is authorized by the prescriber either in the original prescription or by oral order which is promptly reduced to writing by the pharmacist. However, any drug dispensed by filling or refilling a written or oral prescription of a physician, dentist, or veterinarian shall be exempt from the requirements of this section except subdivisions (1) and (9) of this section if the drug bears a label containing the name and address of the dispenser, the serial number and date of the prescription or its filling, the name of the prescriber and, if stated in the prescription, the name of the patient, and the directions for use and cautionary statements, if any, contained in the prescription. This exemption shall not apply to any drug dispensed in the course of the conduct of a business of dispensing drugs pursuant to diagnosis by mail.

History. Acts 1953, No. 415, § 15; 1977, No. 938, § 1; A.S.A. 1947, § 82-1115.

U.S. Code. The Federal Food, Drug,

and Cosmetic Act, referred to throughout this section, is codified as 21 U.S.C. § 301 et seq.

CASE NOTES

Refills.

It was a violation of subdivision (11) of this section for a pharmacist to dispense a drug requiring a prescription to one who presented a bottle bearing a label of another pharmacy containing the name of the drug, the name of the physician purportedly originally prescribing it, and the

purported name of a patient without the written or oral refill prescription of the physician. *Arkansas State Bd. of Pharmacy v. Patrick*, 243 Ark. 967, 423 S.W.2d 265 (1968).

Cited: *Floyd v. Arkansas State Bd. of Pharmacy*, 248 Ark. 459, 451 S.W.2d 874 (1970).

20-56-212. Adulterated cosmetic.

A cosmetic shall be deemed to be adulterated:

(1) If it bears or contains any poisonous or deleterious substance which may render it injurious to users under the conditions of use prescribed in the labeling or advertisement thereof, or under such conditions of use as are customary or usual. However, this provision shall not apply to coal tar hair dye, the label of which bears the following legend conspicuously displayed thereon: "Caution — This product contains ingredients which may cause skin irritation on certain individuals, and a preliminary test according to accompanying directions should first be made. This product must not be used for dyeing the eyelashes or eyebrows; to do so may cause blindness", and the labeling of which bears adequate direction for such preliminary testing. For the purposes of this subdivision and subdivision (5) of this section, the term "hair dye" shall not include eyelash dyes or eyebrow dyes;

(2) If it consists in whole or part of any filthy, putrid, or decomposed substance;

(3) If it has been produced, prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth or whereby it may have been rendered injurious to health;

(4) If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health; or

(5) If it is not a hair dye and it bears or contains a coal tar color other than one from a batch which has been certified under authority of the federal Food, Drug, and Cosmetic Act.

History. Acts 1953, No. 415, § 16; and Cosmetic Act, referred to subsection A.S.A. 1947, § 82-1116. (5), is codified as 21 U.S.C. § 301 et seq.

U.S. Code. The Federal Food, Drug,

20-56-213. Misbranded cosmetic.

A cosmetic shall be deemed to be misbranded:

(1) If its labeling is false or misleading in any particular;

(2) If in package form unless it bears a label containing:

(A) The name and place of business of the manufacturer, packer, or distributor; and

(B) An accurate statement of the quantity of the contents in terms of weight, measure, or numerical count, provided that reasonable variations shall be permitted and exemptions as to small packages shall be established by regulations prescribed by the State Board of Health;

(3) If any word, statement, or other information required by or under authority of this subchapter to appear on the label is not prominently placed thereon with such conspicuousness, as compared with other words, statements, designs, or devices, in the labeling and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use; or

- (4) If its container is so made, formed, or filled as to be misleading.

History. Acts 1953, No. 415, § 17;
A.S.A. 1947, § 82-1117.

20-56-214. False or misleading advertisement.

(a) An advertisement of a food, drug, device, or cosmetic shall be deemed to be false if it is false or misleading in any particular.

(b)(1) For the purpose of this subchapter, the advertisement of a drug or device representing it to have any effect in albuminuria, appendicitis, arteriosclerosis, blood poison, bone disease, Bright's disease, cancer, carbuncles, cholecystitis, diabetes, diphtheria, dropsy, erysipelas, gallstones, heart and vascular diseases, high blood pressure, mastoiditis, measles, meningitis, mumps, nephritis, otitis media, paralysis, pneumonia, poliomyelitis or infantile paralysis, prostate gland disorders, pyelitis, scarlet fever, sexual impotence, sinus infection, smallpox, tuberculosis, tumors, typhoid, uremia, or venereal disease shall also be deemed to be false, except that no advertisement not in violation of subsection (a) of this section shall be deemed to be false under this subsection if it is disseminated only for the purpose of public health education by persons not commercially interested, directly or indirectly, in the sale of such drugs or devices.

(2) However, whenever the State Board of Health determines that an advance in medical science has made any type of self-medication safe as to any of the diseases named above, the board shall by regulation authorize the advertisement of drugs having curative or therapeutic effect for such disease, subject to such conditions and restrictions as the board may deem necessary in the interests of public health.

(3) This subsection shall not be construed as indicating that self-medication for diseases other than those named herein is safe or efficacious.

History. Acts 1953, No. 415, § 18;
A.S.A. 1947, § 82-1118.

20-56-215. Prohibited acts.

The following acts and the causing thereof within the State of Arkansas are prohibited:

(1) The manufacture or sale, delivery, holding, or offering for sale of any food, drug, device, or cosmetic that is adulterated, misbranded, or abandoned;

(2) The adulteration, misbranding, or abandoning of any food, drug, device, or cosmetic;

(3) The receipt in commerce of any food, drug, device, or cosmetic knowing it to be adulterated, misbranded, or abandoned, and the delivery or proffered delivery thereof for pay or otherwise;

(4) The sale, delivery for sale, holding for sale, or offering for sale of any article in violation of § 20-56-217;

- (5) The dissemination of any false advertisement;
- (6) The refusal to permit entry or inspection or to permit the taking of a sample, as authorized by § 20-56-220;
- (7) The giving of a guaranty or undertaking which is false, except by a person who relied on a guaranty or undertaking to the same effect signed by, and containing the name and address of, the person residing in the State of Arkansas from whom he or she recieved in good faith the food, drug, device, or cosmetic;
- (8) The removal or disposal of a detained or embargoed article in violation of § 20-56-216;
- (9) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of, or the doing of any other act with respect to, a food, drug, device, or cosmetic if the act is done while the article is held for sale and results in the article being misbranded; and
- (10) Forging, counterfeiting, simulating, falsely representing or, without proper authority, using any mark, stamp, tag, label, or other identification device authorized or required by regulations promulgated under the provisions of this subchapter.

History. Acts 1953, No. 415, § 3;
A.S.A. 1947, § 82-1103; Acts 1991, No.
924, § 2.

20-56-216. Adulterated, misbranded, or abandoned food, drug, device, or cosmetic — Procedures.

(a)(1) Whenever an authorized agent of the State Board of Health finds or has probable cause to believe that any food, drug, device, or cosmetic is adulterated, so misbranded, or abandoned as to be dangerous or fraudulent within the meaning of this subchapter, he or she shall affix to the article a tag or other appropriate marking giving notice that the article is, or is suspected of being, adulterated, misbranded, or abandoned and has been detained or embargoed and warning all persons not to move, transfer from one (1) place to another, remove, or dispose of the article by sale or otherwise until written permission or order for movement, transfer, removal, or disposal is given by the agent or the court.

(2) It shall be unlawful for any person to move, transfer, remove, or dispose of the detained or embargoed article by sale or otherwise without permission.

(b)(1) When an article detained or embargoed under subsection (a) of this section has been found by an agent to be adulterated, misbranded, or abandoned, the agent shall petition the judge of the circuit court in whose jurisdiction the article is detained or embargoed for a libel for condemnation of the article.

(2) When the agent has found that an article so detained or embargoed is not adulterated, misbranded, or abandoned, then he or she shall remove the tag or other marking.

(c)(1) If the court finds that a detained or embargoed article is adulterated, misbranded, or abandoned, then the article, after entry of the decree, shall be destroyed at the expense of the claimant when under the supervision of the agent of the board. All court costs and fees and storage and other proper expenses shall be taxed against the claimant of the article or his agent.

(2) When the adulteration, misbranding, or abandoning can be corrected by proper labeling or processing of the article, the court, after entry of the decree and after costs, fees, and expenses have been paid and a good and sufficient bond, conditioned that the article shall be so labeled or processed, has been executed, may direct that the article be delivered to the claimant thereof for labeling or processing under the supervision of an agent of the board.

(3) The expense of the supervision shall be paid by the claimant.

(4) The bond shall be returned to the claimant of the article upon representation to the court by the board that the article is no longer in violation of this subchapter and that the expenses of the supervision have been paid.

(d) Whenever the board or any of its authorized agents shall find in any room, building, vehicle of transportation, or other structure any meat, seafood, poultry, vegetable, fruit, or other perishable articles which are unsound or contain any filthy, decomposed, or putrid substance or which may be poisonous or deleterious to health or otherwise unsafe, those articles being declared to be a nuisance, the board or its authorized agent shall immediately condemn or destroy those articles or in any other manner render those articles unsalable as human food.

History. Acts 1953, No. 415, § 6; 1957, No. 336, § 1; A.S.A. 1947, § 82-1106; Acts 1991, No. 924, § 3.

Cross References. Jurisdiction of circuit courts, Ark. Const. Amend. 80, §§ 6, 19.

20-56-217. Contamination with microorganisms.

(a) Whenever the State Board of Health finds after investigation that the distribution in Arkansas of any class of food may, by reason of contamination with microorganisms during manufacture, processing, or packing thereof in any locality, be injurious to health and that the injurious nature cannot be adequately determined after the articles have entered commerce, it then, and in that case only, shall promulgate regulations providing for the issuance of permits to manufacturers, processors, or packers of the class of food in the locality. To these permits shall be attached such conditions governing the manufacture, processing, or packing of the class of food for such temporary period of time as may be necessary to protect the public health. After the effective date of the regulations and during the temporary period, no person shall introduce or deliver for introduction into commerce any food manufactured, processed, or packed by any manufacturer, processor, or packer unless the manufacturer, processor, or packer holds a permit issued by the board as provided by the regulations.

(b) The board is authorized to suspend immediately upon notice any permit issued under authority of this section if it is found that any of the conditions of the permit have been violated. The holder of a permit so suspended shall be privileged at any time to apply for the reinstatement of the permit. The board shall, immediately after prompt hearing and an inspection of the establishment, reinstate the permit if it is found that adequate measures have been taken to comply with and maintain the conditions of the permit, as originally issued or as amended.

(c) Any officer or employee designated by the board shall have access to any factory or establishment, the operator of which holds a permit from the board, for the purpose of ascertaining whether or not the conditions of the permit are being complied with, and denial of access for the inspection shall be grounds for suspension of the permit until access is freely given by the operator.

History. Acts 1953, No. 415, § 12;
A.S.A. 1947, § 82-1112.

20-56-218. Poisonous or deleterious substance — Regulations for use.

(a) Any poisonous or deleterious substance added to any food, except where the substance is required in the production thereof or cannot be avoided by good manufacturing practice, shall be deemed to be unsafe for purposes of the application of § 20-56-208(1)(B), but when the substance is so required or cannot be so avoided, the State Board of Health shall promulgate regulations limiting the quantity therein or thereon to such extent as the board finds necessary for the protection of the public health. Any quantity exceeding the limits so fixed shall also be deemed to be unsafe for purposes of the application of § 20-56-208(1)(B).

(b) While such a regulation is in effect limiting the quantity of any substance in the case of any food, the food shall not, by reason of bearing or containing any added amount of the substance not in excess of the limit established by regulation, be considered to be adulterated within the meaning of § 20-56-208(1)(A).

(c) In determining the quantity of the added substance to be tolerated in or on different articles of food, the board shall take into account the extent to which the use of the substance is required or cannot be avoided in the production of each article and the other ways in which the consumer may be affected by the same or other poisonous or deleterious substances.

History. Acts 1953, No. 415, § 13;
A.S.A. 1947, § 82-1113.

20-56-219. State Board of Health — Authority to regulate.

(a)(1) The authority to promulgate regulations for the efficient enforcement of this subchapter is vested in the State Board of Health.

(2) The board is authorized to make the regulations promulgated under this subchapter conform, insofar as practicable, with those promulgated under the federal Food, Drug, and Cosmetic Act.

(b)(1) Before promulgating any regulations contemplated by §§ 20-56-209(10), 20-56-211(4) and (6)-(8), 20-56-214(b), 20-56-217, or subsection (c) of this section, the board shall give appropriate notice of the proposal and of the time and place for a hearing.

(2) The regulation so promulgated shall become effective on a date fixed by the board which shall not be prior to thirty (30) days after its promulgation.

(3) The regulation may be amended or repealed in the same manner as is provided for its adoption, except that, in the case of a regulation amending or repealing a regulation, the board, to such an extent as it deems necessary in order to prevent undue hardship, may disregard the foregoing provisions regarding notice, hearing, or effective date.

(c)(1) Whenever in the judgment of the board such action will promote honesty and fair dealing in the interest of consumers, the board shall promulgate regulations fixing and establishing for any food or class of food a reasonable definition and standard of identity or reasonable standard of quality or fill of container.

(2) In prescribing a definition and standard of identity for any food or class of food in which optional ingredients are permitted, the board shall, for the purpose of promoting honesty and fair dealing in the interest of consumers, designate the optional ingredients which shall be named on the label.

(3) The definitions and standards so promulgated shall conform so far as practicable to the definitions and standards promulgated under authority of the federal Food, Drug, and Cosmetic Act.

History. Acts 1953, No. 415, §§ 9, 19; and Cosmetic Act, referred to subdivisions A.S.A. 1947, §§ 82-1109, 82-1119. (a)(2) and (c)(3), is codified as 21 U.S.C.

U.S. Code. The Federal Food, Drug, § 301 et seq.

CASE NOTES**Scope of Regulations.**

Although the Board of Health is authorized to make its regulations conform to those issued by the federal agency, the state statute does not indicate a legislative intention to confine the Board of

Health to the exact field covered by the federal directives. *Herron v. Arkansas Whsle. Grocers Ass'n*, 227 Ark. 156, 296 S.W.2d 409 (1956).

Cited: *Austin v. Onnes*, 224 Ark. 1041, 278 S.W.2d 93 (1955).

20-56-220. State Board of Health — Inspection.

(a) The State Board of Health or its authorized agent shall have free access at all reasonable hours to any factory, warehouse, or establishment in which foods, drugs, devices, or cosmetics are manufactured,

processed, packed, or held for introduction into commerce or to enter any vehicle being used to transport or hold such foods, drugs, devices, or cosmetics in commerce, for the purpose of:

(1) Inspecting the factory, warehouse, establishment, or vehicle to determine if any of the provisions of this subchapter are being violated; and

(2) Securing samples or specimens of any food, drug, device, or cosmetic after paying or offering to pay for the samples.

(b) It shall be the duty of the board to make or cause to be made examinations of samples secured under the provisions of this section to determine whether or not any provision of this subchapter is being violated.

History. Acts 1953, No. 415, § 20;
A.S.A. 1947, § 82-1120.

20-56-221. State Board of Health — Publication and dissemination of information.

(a) The State Board of Health may cause reports to be published summarizing all judgments, decrees, and court orders which have been rendered under this subchapter, including the nature of the charge and the disposition thereof.

(b) The board may also cause to be disseminated such information regarding food, drugs, devices, and cosmetics as the board deems necessary in the interest of the public health and the protection of the consumer against fraud.

(c) Nothing in this section shall be construed to prohibit the board from collecting, reporting, and illustrating the results of the investigations of the board.

History. Acts 1953, No. 415, § 21;
A.S.A. 1947, § 82-1121.

CASE NOTES

Cited: Austin v. Onnes, 224 Ark. 1041,
278 S.W.2d 93 (1955).

20-56-222. State Board of Health — Enforcement of subchapter.

(a) The enforcement of the provisions of this subchapter and all acts ancillary to it shall be the duty of the Food and Drug Division of the State Board of Health.

(b) The board is authorized to appoint the necessary personnel to properly administer this subchapter.

History. Acts 1953, No. 415, § 22;
A.S.A. 1947, § 82-1122.

20-56-223. State Board of Health — Enforcement of federal law.

The State Board of Health is authorized to confer and cooperate with the federal Food and Drug Administration in the enforcement of the national Food, Drug, and Cosmetic Act as it may apply to food, liquor, drugs, and cosmetic products received in this state from other states, territories, or foreign countries.

History. Acts 1953, No. 415, § 23; A.S.A. 1947, § 82-1123.

U.S. Code. The Food, Drug, and Cos-

metic Act referred to in this section is codified as 21 U.S.C. § 301 et seq.

CHAPTER 57**REGULATION OF FOOD GENERALLY****SUBCHAPTER.**

1. GENERAL PROVISIONS.
2. FOOD SERVICE ESTABLISHMENTS.
3. FLOUR AND BREAD ENRICHMENT ACT.
4. MISCELLANEOUS FOODS.

RESEARCH REFERENCES

Am. Jur. 35A Am. Jur. 2d, Food, § 1 et seq.

C.J.S. 36A C.J.S., Food, § 3 et seq.

SUBCHAPTER 1 — GENERAL PROVISIONS**SECTION.**

- 20-57-101. Sale, importation, etc., of certain food prohibited.
- 20-57-102. Salvage of food.
- 20-57-103. Donors of canned or perish-

SECTION.

- able food not liable — Exception.
- 20-57-104. Food safety.

Cross References. Food, Drug, and Cosmetic Act, § 20-56-201 et seq.

Effective Dates. Acts 1893, No. 161, § 2: effective on passage.

Acts 1987, No. 451, § 3: Mar. 30, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that due to current economic conditions the ability of the Department of Health to adequately protect the public health and safety of the people of this state is threatened; that to modestly increase fees is a means of assuring that the important work of the Department continues without disruptions in service. Therefore, an emergency is hereby declared to

exist and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 378, § 8: Mar. 6, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that due to current revenue shortfalls the services offered by the Department of Health to the citizens of the State are threatened; that due to recent developments in the food service industry it is necessary to expand coverage of regulations to protect the health and safety of the public of this State, that the immedi-

ate enactment of this bill upon passage is necessary to assure the safety and well-being of the public. Therefore, an emergency is hereby declared to exist and this

Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

20-57-101. Sale, importation, etc., of certain food prohibited.

(a) Whoever shall knowingly sell or offer or expose for sale, or bring or cause to be brought into this state to sell or offer for sale, or shall have in his, her, or their possession with intent to sell for food, the flesh of any animal dying otherwise than by slaughter, or slaughtered when diseased, or shall sell or offer for sale the flesh purported to be of one (1) animal, knowing it to be of another species, or shall offer for sale or sell any tainted, diseased, corrupted, decayed, or unwholesome meat, fish, fowl, vegetable, produce, or provision of any kind whatever without making this fully known to the purchaser, or shall sell or offer to sell the meat of any calf which was killed before it had attained the age of six (6) weeks, shall be deemed guilty of a misdemeanor.

(b) Upon conviction, the person shall be punished by a fine of not exceeding five hundred dollars (\$500) or by imprisonment in the county jail not exceeding six (6) months.

History. Acts 1893, No. 161, § 1, p. 290; C. & M. Dig., § 4826; Pope's Dig., § 6017; A.S.A. 1947, § 82-901.

CASE NOTES

Inspection.

Cities may require milk and meats to be inspected before they are sold. *Carpenter v. City of Little Rock*, 101 Ark. 238, 142 S.W. 162 (1911).

Cited: *Hixson v. Cook*, 130 Ark. 401, 197 S.W. 698 (1917); *Austin v. Onnes*, 224 Ark. 1041, 278 S.W.2d 93 (1955).

20-57-102. Salvage of food.

(a) As used in this section, unless the context otherwise requires:

(1) "Food salvage distributor" means a person, firm, or corporation who engages in the business of distributing, peddling, or otherwise trafficking in any salvaged products enumerated in the definition of a food salvager; and

(2) "Food salvager" means a person, firm, or corporation engaged in the business of reconditioning, labeling, relabeling, repackaging, reconditioning, sorting, cleaning, culling, or by other means salvaging items and who sells, offers for sale, or distributes for human or animal consumption any salvaged food, beverage, including beer, wine and distilled spirits, vitamin, food supplement, dentifrice, drug, cosmetic, single-service food container or utensil, soda straws, paper napkins, or any other product of a similar nature that has been damaged or

contaminated by fire, water, smoke, chemicals, transit, or by any other means.

(b)(1) Food salvagers and food salvage distributors located in or operating in Arkansas shall obtain a permit from the Department of Health upon payment of a fee of one hundred fifty dollars (\$150) as a condition of the right to carry on the business.

(2) Permits issued under this section shall not be transferable and shall be renewed annually.

(3) The department may issue permits for less than one (1) year. The cost of the permits shall be based upon the number of months the permit is valid divided by twelve (12) months multiplied by the annual permit fee.

(c) The State Board of Health is empowered to promulgate and enforce reasonable regulations in order to assure that salvaged foods are safe for human or animal consumption, as the case may be.

(d) It shall be the duty of the Division of Sanitarian Services of the State Board of Health to administer the provisions of this section and the regulations pursuant to it.

(e) All fees levied and collected under the provisions of this section are declared to be special revenues and shall be deposited in the State Treasury, there to be credited to the Public Health Fund.

(f)(1) A person who violates a provision of this section or a regulation pursuant to it shall be punished by a fine of not less than ten dollars (\$10.00) nor more than one hundred dollars (\$100) or shall be sentenced to imprisonment for not more than thirty (30) days, or both fine and imprisonment.

(2) Each day on which a violation of this section occurs or continues constitutes a separate offense and shall be punished accordingly.

(g) Subject to the rules and regulations which may be implemented by the Chief Fiscal Officer of the State, the disbursing officer for the department is authorized to transfer all unexpended funds relative to the food salvager's permit that pertain to fees collected, as certified by the Chief Fiscal Officer of the State, to be carried forward and made available for expenditures for the same purpose for any following fiscal year.

History. Acts 1963, No. 241, §§ 1-8; — 82-974; Acts 1987, No. 451, § 1; 1991, 1977, No. 357, § 5; A.S.A. 1947, §§ 82-967 No. 378, § 1.

20-57-103. Donors of canned or perishable food not liable — Exception.

(a) As used in this section, unless the context otherwise requires:

(1) "Canned food" means any food commercially processed and prepared for human consumption;

(2) "Perishable food" means any food which may spoil or otherwise become unfit for human consumption because of its nature, type, or physical condition. This term includes, but is not limited to, fresh and processed meats, poultry, seafood, dairy products, bakery products,

eggs in the shell, fresh fruits and vegetables, and foods which have been packaged, refrigerated, or frozen.

(b) The provisions of this section shall govern all good faith donations of perishable food which is not readily marketable due to appearance, freshness, grade, surplus, or other conditions, but nothing in this section shall restrict the authority of any appropriate agency to regulate or ban the use of the food for human consumption.

(c) All other provisions of law notwithstanding, a good faith donor of canned or perishable food which is apparently fit for human consumption at the time it is donated to a bona fide charitable or not-for-profit organization for free distribution or distribution at a nominal cost shall not be subject to criminal or civil liability arising from an injury or death due to the condition of the food unless the injury or death is a direct result of the gross negligence, recklessness, or intentional misconduct of the donor.

History. Acts 1981, No. 73, §§ 1-3;
A.S.A. 1947, §§ 82-998.1 — 82-998.3.

20-57-104. Food safety.

(a) Employees of food service establishments shall keep their hands and exposed portions of their arms clean in a manner approved by the Department of Health.

(b)(1) Except when washing fruits and vegetables, employees of food service establishments shall avoid contact of exposed ready-to-eat food with their hands by use of suitable utensils such as deli tissue, spatulas, tongs, or single-use gloves, or they shall wash their hands and exposed portions of their arms utilizing a hand-washing program approved by the department.

(2) Employees shall minimize bare-hand and bare-arm contact with exposed food that is not in a ready-to-eat form.

(c)(1) Within thirty (30) days of August 13, 2001, the department shall initiate a full review of the current version of the United States Food and Drug Administration Model Food Code.

(2) The department shall report its findings to the House Interim Committee on Public Health, Welfare, and Labor and the Senate Interim Committee on Public Health, Welfare, and Labor.

(d) As used in this section, "food service establishment" means any:

(1) Fixed or mobile restaurant, coffee shop, cafeteria, short-order cafe, luncheonette, grille, tearoom, soda fountain, sandwich shop, hotel kitchen, smorgasbord, tavern, bar, cocktail lounge, night club, roadside stand, industrial feeding establishment, school lunch project, private, public, or nonprofit organization or institution routinely serving the public, catering kitchen, commissary, or similar place in which the food or drink is prepared for sale or for service on the premises or elsewhere;

(2) Grocery store, delicatessen, meat market, retail bakery, or other establishment which sells or otherwise provides food for immediate or on-premise consumption, regardless of whether serving food for immediate consumption is the primary activity of the business; and

(3) Other eating and drinking establishment where food is served or provided for the public with or without charge.

History. Acts 2001, No. 1656, § 1.

SUBCHAPTER 2 — FOOD SERVICE ESTABLISHMENTS

SECTION.

20-57-201. Definitions.

20-57-202. Public Health Advisory Board
— Creation.

20-57-203. Director of the Department of
Health — Powers and du-
ties.

SECTION.

20-57-204. Permit required.

20-57-205. Disposition of funds.

20-57-206. Duplicate fees not required.

20-57-207. Prevention of choking —
Nonliability.

20-57-208. Classification by letter grades.

Cross References. Identification of catfish by restaurants, § 20-61-301 et seq.

Use of imported meat in food establishment, § 20-60-101.

Effective Dates. Acts 1979, No. 58, § 3: Feb. 6, 1979. Emergency clause provided: "It is hereby found and determined by the General Assembly that under present laws certain food establishments are within the provisions of both Act 357 of 1977 and Act 114 of 1941, and are required to pay a fee and obtain a permit under each of those acts; that this results in a duplication of expense and effort to licensed establishments and to the Health Department which administers both laws; that the requirement that such food establishments obtain a permit and pay the fee under both the acts serves no useful public health purpose and that this Act is designed to correct this situation and should be given effect as soon as possible. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1980 (1st Ex. Sess.), No. 20, § 3: Jan. 25, 1980. Emergency clause provided: "It is hereby found and determined by the General Assembly that confusion exists regarding the authority of the State Health Department to conduct sanitary inspections of public school cafeterias, and this Act is immediately necessary to specifically authorize such inspections. Therefore, an emergency is hereby declared to exist, and this Act being immediately necessary for the preservation of

the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 903, § 6: Apr. 13, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that due to current revenue shortfalls the services offered by the Department of Health to the citizens of this State are threatened; that due to recent developments in the food service industry it is necessary to expand the coverage of regulations to protect the health and safety of the public of this State, that the immediate enactment of this bill upon passage is necessary to assure the safety and well-being of the public. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 378, § 8: Mar. 6, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that due to current revenue shortfalls the services offered by the Department of Health to the citizens of the State are threatened; that due to recent developments in the food service industry it is necessary to expand coverage of regulations to protect the health and safety of the public of this State, that the immediate enactment of this bill upon passage is necessary to assure the safety and well-being of the public. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 102, § 5: Feb. 5, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that the food service establishment permit fee provided for in Arkansas Code § 20-57-204 expires on July 1, 1997; that the fee should continue; and that unless this emergency clause is enacted the fee will expire prior to the effective date of this act. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective

on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor [sic], it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2001, No. 467, § 2: Feb. 28, 2001. Emergency clause provided: "It is found and determined by the General Assembly that the food service permit fee supports the food service program of the Department of Health; that the program provides food safety training for food inspectors and industry personnel; that the present permit fee expires on July 1, 2001; that the permit fee should be continued in effect in order to provide funding for the food service program of the Department of Health; and that unless this emergency clause is adopted this act will not become effective until after July 1, 2005. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

20-57-201. Definitions.

As used in §§ 20-57-202 — 20-57-205, unless the context otherwise requires:

(1)(A) "Food service establishment" means any place where food is prepared, processed, stored, or intended for use or consumption by the public regardless of whether there is a charge for the food. The term includes wholesale and retail food stores, convenience stores, food markets, delicatessens, restaurants, food processing or manufacturing plants, bottling and canning plants, wholesale and retail block and prepackaged ice manufacturing plants, food caterers, and food warehouses. The term does not include supply vehicles or locations of vending machines.

(B) The following are also exempt:

(i) Group homes routinely serving ten (10) or fewer persons;

- (ii) Day-care centers routinely serving ten (10) or fewer persons;
 - (iii) Potluck suppers, community picnics, or other group gatherings where food is served but not sold; and
 - (iv) Nonprofit organizations that sell food, on a temporary basis for fund-raising events; and
- (2) "Food service industry" means the aggregate of food service establishments.

History. Acts 1977, No. 357, § 1; 1979, 1987, No. 903, § 1; 1989, No. 67, § 1; No. 734, § 1; A.S.A. 1947, § 82-997; Acts 1991, No. 378, § 2.

20-57-202. Public Health Advisory Board — Creation.

(a) There is created the Public Health Advisory Board to be composed of nine (9) members to be selected as provided in this section.

(b)(1) The advisory board shall be advisory to the Division of Sanitarian Services for the purpose of recommending rules and regulations concerning food and other health code standards within the food service industry.

(2) The State Board of Health shall not adopt rules or regulations concerning food service or other health code standards related to the food service industry until the rules or regulations have been reviewed by the advisory board in a regularly called or specially called meeting. However, if a meeting is not held within forty-five (45) days after a written notice by the state board of intent to promulgate rules and regulations, the review by the advisory board will be deemed to be waived.

(3) The Director of the Department of Health, or the state board, or both, may adopt rules and regulations pertaining to the food service industry in times of emergency or natural disaster without notice to the advisory board.

(c)(1) Three (3) of the members of the advisory board shall be appointed by the Governor from the food service industry, one (1) member shall be appointed by the Governor from the grocery industry, one (1) member shall be appointed by the Governor from the oil marketing industry, and three (3) members shall be appointed by the Governor from the division who shall be the Director of Sanitarian Services, the Food Service Sanitarian Program Administrator, and one (1) area Sanitarian Supervisor. One (1) member shall be appointed by the Governor who shall be a physician with the Department of Health.

(2) Members of the advisory board who represent the food service industry, the grocery industry, and the oil marketing industry shall be appointed for terms of six (6) years, and they shall hold office until the appointment and qualification of their successors.

(d) Advisory board members may receive expense reimbursement in accordance with § 25-16-901 et seq.

History. Acts 1977, No. 357, § 2; 1979, 1987, No. 903, § 2; 1989, No. 67, § 2; No. 57, § 1; A.S.A. 1947, § 82-997.1; Acts 1997, No. 250, § 200.

Publisher's Notes. Acts 1977, No. 357, § 2, provided, in part, that two (2) of the initial members of the Public Health Advisory Committee would serve for two (2) years, two (2) for four (4) years, and two (2) for six (6) years.

Acts 1987, No. 903, § 2, provided, in part, that two (2) of the initial members shall serve for two (2) years, two (2) for four (4) years, and two (2) for six (6) years.

Amendments. The 1997 amendment rewrote (d).

20-57-203. Director of the Department of Health — Powers and duties.

The Director of the Department of Health shall have:

(1) Power and authority to prevent the proliferation of infections, contagious, and communicable diseases resulting from unsanitary food service operations; and

(2) Direction and control over all sanitary and quarantine measures for dealing with all such diseases within the state and to suppress the diseases and prevent their spread.

History. Acts 1977, No. 357, § 6;
A.S.A. 1947, § 82-997.4.

20-57-204. Permit required.

(a) No food service establishment shall be allowed to operate unless it has procured a food establishment permit from the Division of Environmental Health Protection of the Department of Health.

(b)(1) Permits issued under §§ 20-57-201 — 20-57-205 shall be nontransferable, shall be renewed annually, and shall expire one (1) year after issuance or at a time specified by the Department of Health.

(2) A late fee equal to one-half ($\frac{1}{2}$) of the renewal fee for any type of establishment shall be charged to renew a permit sixty (60) days after the expiration date.

(c) Any food service establishment may obtain a food service permit by paying an annual permit fee of thirty-five dollars (\$35.00) to the department and by meeting the minimum requirements established by the applicable rules and regulations.

(d)(1) Each distinctively separate food establishment type and class as defined in §§ 20-57-201 — 20-57-205 shall be required to procure a permit for that type or class per each location not to exceed a total of one hundred five dollars (\$105.00).

(2) On and after July 1, 2005, the fee provisions as set forth in this subsection shall be null and void, and any food service establishment may obtain a food service permit by meeting the minimum requirements established by the applicable rules and regulations.

(e)(1) A temporary food establishment permit shall be procured from the Division of Environmental Health Protection by any temporary facility operating at a fixed location for a period of not more than fourteen (14) consecutive days in conjunction with a single event or celebration.

(2) A fee of five dollars (\$5.00) shall be charged per day for each temporary food establishment permit.

(f) Public school cafeterias shall be exempt from payment of the permit fee but shall submit to inspection pursuant to the rules and regulations of the State Board of Health.

(g) The following shall not be required to obtain permits, pay fees, or submit to inspections by the department but may seek the advice and assistance of the department:

(1) Potluck suppers, community picnics, or other group gatherings where food is served but not sold; and

(2) Nonprofit organizations that sell food on a temporary basis for fund-raising events.

(h) Any retail food store having gross sales of less than one hundred fifty thousand dollars (\$150,000) must obtain a food service permit but shall be exempt from payment of the permit fee.

(i) Any bottler of water that is not a resident of this state shall obtain a permit from the Division of Sanitarian Services of the Department of Health in order to sell its bottled water within this state. The bottler shall submit to the department annually a bacteriological analysis conducted by a laboratory approved by the department, a certificate of operation from the bottler's resident state, and a permit fee of fifty dollars (\$50.00).

History. Acts 1977, No. 357, § 3; 1980 (1st Ex. Sess.), No. 20, § 1; A.S.A. 1947, § 82-997.2; Acts 1987, No. 903, § 3; 1989, No. 67, § 3; 1991, No. 378, § 3; 1993, No. 130, § 1; 1993, No. 146, § 1; 1995, No. 168, § 1; 1997, No. 102, § 1; 1999, No. 217, §§ 1, 2; 2001, No. 467, § 1; 2001, No. 546, § 1.

Amendments. The 1997 amendment substituted "July 1, 2001" for "July 1, 1997" in (d)(2).

The 1999 amendment substituted "Environmental Health Protection" for "Sanitarian Services" in (a); substituted "thirty-five dollars (\$35.00)" for "twenty-five

dollars (\$25.00)" in (c) and (e); substituted "one hundred five dollars (\$105.00)" for "seventy-five dollars (\$75.00)" in (d)(1); and substituted "division" for "Division of Sanitarian Services" in (e).

The 2001 amendment by No. 467, in (d)(2), substituted "2005" for "2001" and deleted "(d)" following "subsection."

The 2001 amendment by No. 546 substituted the present (e)(2) for the former, which read: "The fee of thirty-five dollars (\$35.00) shall be charged for each temporary food establishment permit"; and deleted (e)(3).

20-57-205. Disposition of funds.

(a) All fees levied and collected under the provisions of §§ 20-57-102 and 20-57-204 are declared to be special revenues and shall be deposited in the State Treasury, there to be credited to the Public Health Fund to be used exclusively by the Division of Sanitarian Services for personnel, equipment, and training of sanitarians and food service industry personnel.

(b) Subject to such rules and regulations as may be implemented by the Chief Fiscal Officer of the State, the disbursing officer for the Department of Health is authorized to transfer all unexpended funds relative to the food service program that pertain to fees collected, as certified by the Chief Fiscal Officer of the State, to be carried forward

and made available for expenditures for the same purpose for any following fiscal year.

History. Acts 1977, No. 357, § 4; 378, § 4, as enacted, contained the following language at the end of (a): "equipment and training of sanitarians and industry personnel."
A.S.A. 1947, § 82-997.3; Acts 1987, No. 903, § 4; 1991, No. 378, § 4.

Publisher's Notes. Acts 1991, No.

20-57-206. Duplicate fees not required.

A food service establishment which holds a current food service permit issued by the Division of Sanitarian Services of the Department of Health under the provisions of §§ 20-57-102 and 20-57-201 — 20-57-205 shall not be required to pay a fee or obtain a permit under the provisions of §§ 20-59-206 — 20-59-211.

History. Acts 1979, No. 58, § 1; A.S.A. 1947, § 82-998.

20-57-207. Prevention of choking — Nonliability.

(a) The Director of the Department of Health shall study and approve instructions detailing first aid techniques and a poster diagramming first aid techniques designed and intended for use by a person without medical training in removing food which has become lodged in the throat of a choking victim.

(b) The director shall publish the approved instructions and poster and make them available to each food service operation in the state.

(c) Each food service operation shall post the instructions and the poster in places conspicuous to persons employed by or connected with the management of the food service operation in order that persons may become familiar with the techniques and may consult the instructions to provide relief to a choking victim.

(d) Failure of a food service operation to post the instructions and the poster as required by this section shall not subject the food service operation, any of its employees, or any persons connected with its management to any criminal penalty or to civil liability in an action for damages for personal injury or wrongful death arising from any choking emergency.

(e) Nothing in this section shall impose or be construed to impose a duty or obligation upon any food service operation, any of its employees, any person connected with its management, or any other person to remove, attempt to remove, or assist in removing food which has been lodged in the throat of a choking victim.

(f) No food service operation, employee of a food service operation, nor person connected with its management, nor any other person shall be liable in any civil action for damages for personal injury or wrongful death for not removing, not attempting to remove, or not assisting in the removal of food which has become lodged in the throat of a choking victim.

(g) No food service operation, employee of a food service operation, person connected with its management, nor any other person shall be liable in any civil action for damages for personal injury or wrongful death for any acts or omissions of any individual removing, attempting to remove, or assisting in the removal of food lodged in the throat of a choking victim in accordance with instructions supplied by the director.

History. Acts 1977, No. 204, § 1; 1985, No. 225, § 1; A.S.A. 1947, § 82-996.

20-57-208. Classification by letter grades.

(a) As used in this section, "food service establishment" means any restaurant, cafe, cafeteria, soda fountain, hotel kitchen, tavern, industrial feeding establishment, school lunchroom, grocery store, hospital kitchen, nursing home kitchen, and any private, public, or nonprofit organization or institution regularly selling or serving food to the public, or any other place in which food is regularly prepared or offered for sale whether for consumption on or off the premises.

(b) Neither the Department of Health nor any city or county department of health shall continue to classify food service establishments by letter grades on the basis of compliance with state, city, or county sanitary regulations.

History. Acts 1977, No. 526, §§ 1, 2; A.S.A. 1947, §§ 82-1124, 82-1125.

SUBCHAPTER 3 — FLOUR AND BREAD ENRICHMENT ACT

SECTION.

- 20-57-301. Title.
- 20-57-302. Definitions.
- 20-57-303. Applicability.
- 20-57-304. Penalty.
- 20-57-305. Powers and duties of the State Board of Health and the Director of the Department of Health.

SECTION.

- 20-57-306. Vitamins and other ingredients — Flour.
- 20-57-307. Vitamins and other ingredients — Bread.
- 20-57-308. Method of enrichment — Bread.
- 20-57-309. Labeling — Bread and flour.

Preambles. Acts 1945, No. 214 contained a preamble which read: "Whereas, there exists a widespread deficiency of certain constituents in foods necessary to the health and well being of the residents of the State of Arkansas, and, insofar as may be possible, the health of the resi-

dents of the State of Arkansas should be protected against such deficiency by provisions being made for the addition to flour and bread of such necessary constituents, normally present in wheat, and by provisions of formulas for such addition, and rules for enforcement thereof...."

20-57-301. Title.

This subchapter may be cited as the "Flour and Bread Enrichment Act".

History. Acts 1945, No. 214, § 1;
A.S.A. 1947, § 82-934.

20-57-302. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Appropriate federal agency" means the United States Food and Drug Administration or any agency or department or administrative federal officer charged with the enforcement and administration of the federal Food, Drug, and Cosmetic Act;

(2) "Bread" shall include all yeast-raised commercial bakery products, made wholly or partly from wheat flour but excludes products containing no wheat flour or products made from one hundred percent (100%) whole wheat flour and also excludes all biscuits and crackers;

(3) "Enrichment" as applied to flour or bread means the addition thereto of vitamins and other ingredients of the nature required by this subchapter, and the term "enriched flour" as defined by the Food and Drug Administration, 6 Fed. Reg. 2579 (1941) and 8 Fed. Reg. 2772 (1941), and "enriched bread", 6 Fed. Reg. 2772 (1941) and 8 Fed. Reg. 10785 (1943), means flour or bread which has been enriched to conform with the requirements of this subchapter;

(4) "Flour" includes and shall be limited to flour of every kind and description, made wholly or partly from wheat, which conforms to the definition and standard of identity of flour including white flour, wheat flour, and plain flour as promulgated by the United States Food and Drug Administration, 6 Fed. Reg. 2754 (1941), but excluding whole wheat flour made only from the whole wheat berry with no part thereof removed and also excluding special packaged flours not used for bread baking such as cake, pancake, cracker, and pastry flours; and

(5) "Person" means an individual, a corporation, a partnership, an association, a joint stock company, a trust, or any unincorporated organization.

History. Acts 1945, No. 214, § 2; metic Act referred to in this section is
A.S.A. 1947, § 82-935. codified as 21 U.S.C. § 301 et seq.

U.S. Code. The Food, Drug, and Cos-

20-57-303. Applicability.

(a) The terms of this subchapter shall not apply to flour or bread which is made from the entire wheat berry with no parts of the wheat removed from the mixture. In cases of flour or bread containing mixtures of the whole wheat berry and white flour or mixtures of various portions of the wheat berry, the products shall have a vitamin and mineral potency at least equal to enriched flour or enriched bread as described in this subchapter.

(b) The terms of this subchapter shall not apply to flour ground for the wheat producer whereby the miller is paid in wheat or feed for the grinding service rendered, except insofar as the mill may manufacture tollwheat into flour and sell or offer for sale the flour, whereupon this subchapter shall be applicable.

(c) The provisions of this subchapter shall not apply to farmers exchanging their wheat for flour or having the wheat ground into flour and disposing of the wheat for their own use or for the use of farm labor on their farms.

History. Acts 1945, No. 214, § 3;
A.S.A. 1947, § 82-936.

20-57-304. Penalty.

Any person who violates any of the provisions of this subchapter, or the orders, rules, or regulations promulgated by the Director of the Department of Health under authority thereof, shall upon conviction be subject to a fine for each and every offense in a sum not exceeding five hundred dollars (\$500) or to imprisonment for not more than six (6) months, or both fine and imprisonment.

History. Acts 1945, No. 214, § 8;
A.S.A. 1947, § 82-941.

20-57-305. Powers and duties of the State Board of Health and the Director of the Department of Health.

(a) The State Board of Health is authorized as the administrative agency and is directed:

(1) To make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of this subchapter, including, but without being limited to, such orders, rules, and regulations as he or she is specifically authorized and directed to make;

(2) From time to time to adopt such regulations changing or adding to the required ingredients for flour or bread specified in §§ 20-57-302, 20-57-303, and 20-57-306 as shall be necessary to conform to the definitions and standard of identity of enriched flour and enriched bread from time to time promulgated by the appropriate federal agency pursuant to the federal Food, Drug, and Cosmetic Act.

(b) All orders, rules, and regulations adopted by the board pursuant to this subchapter shall be published in the manner prescribed in subsection (c) of this section and, within the limits specified by this subchapter, shall become effective upon such date as the Director of the Department of Health shall fix.

(c) Whenever under this subchapter publication of any notice, order, rule, or regulation is required, the publication shall be made at least three (3) times in ten (10) days in newspapers of general circulation in three (3) different sections of the state.

(d)(1) The director is authorized to collect samples for analysis and to conduct examinations and investigations for the purposes of this subchapter through any officers or employees under his supervision.

(2) All officers and employees shall have authority to enter and inspect any factory, mill, warehouse, shop, or establishment where flour or bread is manufactured, processed, packed, sold, or held or any vehicle and any flour or bread therein, and all pertinent equipment, materials, containers, and labeling.

History. Acts 1945, No. 214, § 7; metec Act referred to in this section is
A.S.A. 1947, § 82-940. codified as 21 U.S.C. § 301 et seq.

U.S. Code. The Food, Drug, and Cos-

20-57-306. Vitamins and other ingredients — Flour.

(a) It shall be unlawful for any person to manufacture, mix, compound, sell, or offer for sale within this state or to ship into this state for human consumption in this state any flour, as defined in § 20-57-302, unless the following vitamins and other ingredients are contained in each pound of flour:

- (1) Not less than two (2) milligrams of vitamin B1 (thiamin);
- (2) Not less than one and two-tenths (1.2) milligrams of riboflavin;
- (3) Not less than sixteen (16) milligrams of niacin (nicotinic acid) or nicotinic acid amide (niacin amide); and
- (4) Not less than thirteen (13) milligrams of iron (Fe);
- (5) The enrichment of self-rising flour shall require, in addition to the above ingredients, not less than five hundred (500) milligrams of calcium.

(b) The ingredients and amounts listed in subsection (a) of this section are in accordance with the definition of enriched flour as promulgated by the United States Food and Drug Administration, 8 Fed. Reg. 7514 (1943).

(c) The enrichment of flour shall be accomplished by a milling process, addition of vitamins from natural or synthetic sources, addition of minerals, by a combination of these methods, or by any method which is permitted by the United States Food and Drug Administration with respect to flour introduced into interstate commerce.

(d) The Director of the Department of Health is empowered with the authority and directed to change, or add to, the specifications for ingredients and the amounts thereof required to conform to federal definition of enriched flour when promulgated or as may from time to time be amended.

(e) Iron shall be added only in forms which are assimilable and harmless and which do not impair the enriched flour.

(f)(1) The terms of this section shall not apply to flour sold to distributors, bakers, or other processors if the purchaser furnishes to the seller a certificate in such form as the director shall by regulation prescribe, certifying that the flour will be:

- (A) Resold to a distributor, baker, or other processor;

(B) Used in the manufacture, mixing, or compounding of flour, white bread, or rolls enriched to meet the requirements of this subchapter; or

(C) Used in the manufacture of products other than flour, white bread, or rolls.

(2) It shall be unlawful for any purchaser so furnishing any such certificate to use or resell the flour so purchased in any manner other than as prescribed in this section.

History. Acts 1945, No. 214, § 3;
A.S.A. 1947, § 82-936.

20-57-307. Vitamins and other ingredients — Bread.

(a) It shall be unlawful for any person to manufacture, bake, sell, or offer for sale, or to receive in interstate shipment for sale for human consumption in this state, any bread, as defined in § 20-57-302, unless the following vitamins and other ingredients are contained in each pound of the bread:

(1) Not less than one and one-tenth (1.1) milligrams of Vitamin B1 (thiamin);

(2) Not less than seven-tenths (0.7) milligrams of riboflavin;

(3) Not less than ten (10.0) milligrams of niacin (nicotinic acid) or nicotinic acid amide (niacin amide); and

(4) Not less than ten (10.0) milligrams of iron (Fe).

(b) These ingredients and amounts are in accordance with the definition of enriched bread as promulgated by the United States Food and Drug Administration, 8 Fed. Reg. 10785 (1943).

History. Acts 1945, No. 214, § 4;
A.S.A. 1947, § 82-937.

20-57-308. Method of enrichment — Bread.

The enrichment of bread may be accomplished through the use of enriched flour, other enriched ingredients, synthetic vitamins, harmless iron salts, or by any combination of harmless methods which will produce enriched bread which meets the requirements of § 20-57-306.

History. Acts 1945, No. 214, § 5;
A.S.A. 1947, § 82-938.

20-57-309. Labeling — Bread and flour.

It shall be unlawful to sell or offer for sale in this state any enriched flour or enriched bread which fails to conform to the labeling of the federal Food, Drug, and Cosmetic Act and the regulations promulgated thereunder by the appropriate agency with respect to flour or bread introduced into interstate commerce.

History. Acts 1945, No. 214, § 6; metric Act referred to in this section is A.S.A. 1947, § 82-939.

U.S. Code. The Food, Drug, and Cos-

meted as 21 U.S.C. § 301 et seq.

SUBCHAPTER 4 — MISCELLANEOUS FOODS

SECTION.

20-57-401. Kosher foods.

20-57-402. Honey.

20-57-401. Kosher foods.

Any person who:

(1) Shall sell or expose for sale in any restaurant, delicatessen, hotel, or other place where food products are sold, any article of food falsely represented as kosher either by direct statements orally or in writing, or by the display of the word "kosher" in English or Hebrew letters, by the display of any sign or mark in simulation of the word, or by the display of any insignia, six-pointed star, or any mark which might reasonably be calculated to deceive or lead a reasonable person to believe that a representation is being made that the food exposed for sale, or sold, is kosher or is prepared in accordance with the orthodox Hebrew religious requirements;

(2) With intent to defraud, sells or exposes for sale any meat or meat preparations and falsely represents the product to be kosher, whether the meat preparations are raw or prepared for human consumption, or as having been prepared under, and of products sanctioned by, the orthodox Hebrew religious requirements, or who falsely represents any food product or the contents of any package or contained in a container to be so constituted and prepared by having or permitting to be inscribed upon it the word "kosher" in any language; or

(3) Sells or exposes for sale in the same place of business both kosher and nonkosher meat or meat preparations, either raw or prepared for human consumption, and who fails to indicate on his window signs and all display advertisements, in black letters at least four inches (4") in height: "KOSHER AND NONKOSHER MEAT SOLD HERE", or who exposes for sale in any show window or place of business both kosher and nonkosher meat or meat preparations either raw or prepared for human consumption, and who fails to display over each kind of meat or meat preparations so exposed a sign in black letters at least four inches (4") in height, reading: "KOSHER" and "NONKOSHER" as the case may be,

is guilty of a misdemeanor and punishable by a fine of not more than five hundred dollars (\$500) or by imprisonment of not less than thirty (30) days or not more than six (6) months, in the discretion of the court.

History. Acts 1949, No. 253, § 1;
A.S.A. 1947, § 82-957.

RESEARCH REFERENCES

Ark. L. Rev. Legal Control of Business
in Arkansas, 5 Ark. L. Rev. 137.

20-57-402. Honey.

(a) It is unlawful for any person to package any product and label the product as "honey" or "imitation honey" or to use the word "honey" in any prominent location on the label of the product or to sell or offer for sale any product which is labeled "honey" or "imitation honey" or which contains a label with the word "honey" prominently displayed thereon unless the product is pure honey manufactured by honeybees.

(b) Any person violating the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500). Each violation shall constitute a separate offense.

History. Acts 1973, No. 513, §§ 1, 2;
A.S.A. 1947, §§ 82-985, 82-986.

CHAPTER 58**EGGS****SUBCHAPTER.**

1. GENERAL PROVISIONS.
2. ARKANSAS EGG MARKETING ACT.

RESEARCH REFERENCES

Am. Jur. 35 Am. Jur. 2d, Food, § 38. **C.J.S.** 36A C.J.S., Food, § 6(5).

SUBCHAPTER 1 — GENERAL PROVISIONS**SECTION.**

20-58-101. Marking of cold-storage eggs.

Effective Dates. Acts 1931, No. 223, § 3: Mar. 26, 1931. Emergency clause provided: "All laws and parts of laws in conflict herewith are hereby repealed and it being necessary to protect the buying public who purchase small and large quantities of eggs at intervals and for the pres-

ervation of the public peace, health and safety that this act should immediately become a law, an emergency is hereby declared to exist and this act shall be in full force and effect from and after its passage and approval."

20-58-101. Marking of cold-storage eggs.

(a) Any person, firm, or corporation retailing cold-storage eggs to the public shall mark the eggs in a sufficient manner so that the buyers of the eggs may have knowledge of their being cold-storage eggs by that mark.

(b) Any person, firm, or corporation, or the agents or employees of any person, firm, or corporation violating this section shall be guilty of a misdemeanor and upon conviction shall be fined in any sum not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000).

History. Acts 1931, No. 223, §§ 1, 2; Pope's Dig., §§ 3467, 3468; A.S.A. 1947, §§ 82-932, 82-933.

Publisher's Notes. This section may be affected by § 20-58-210.

SUBCHAPTER 2 — ARKANSAS EGG MARKETING ACT

SECTION.

- 20-58-201. Title.
- 20-58-202. Definitions.
- 20-58-203. Applicability.
- 20-58-204. Penalties.
- 20-58-205. Employees of Arkansas Livestock and Poultry Commission — Powers and duties.
- 20-58-206. Arkansas Livestock and Poultry Commission — Establishment of standards.
- 20-58-207. Prohibited acts.
- 20-58-208. Display of grade and size required.

SECTION.

- 20-58-209. Packing and grading permit.
- 20-58-210. Refrigeration of eggs — Temperature and labeling requirements.
- 20-58-211. Sales to retailers or manufacturers.
- 20-58-212. Retail sales.
- 20-58-213. Possessor of eggs deemed owner — Exceptions.
- 20-58-214. Enforcement.
- 20-58-215. Inspection fees.
- 20-58-216. Audits.

Effective Dates. Acts 1969, No. 220, § 22: July 1, 1969.

Acts 1970 (Ex. Sess.), No. 12, § 4: Mar. 13, 1970. Emergency clause provided: "It is hereby found and determined by the General Assembly that clarification of Act 220 of 1969 is necessary in order to provide adequate procedures for the issuance of shell egg processing plants and egg candling rooms, and to establish reasonable and adequate fees for the maintenance and operation of the egg inspection

and grading program fees to support the egg grading and inspection program of the Livestock and Poultry Commission, and that the immediate passage of this act is necessary to accomplish these purposes. Therefore, an emergency is hereby declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

20-58-201. Title.

This subchapter shall be known and cited as the "Arkansas Egg Marketing Act of 1969".

History. Acts 1969, No. 220, § 1;
A.S.A. 1947, § 82-1301.

20-58-202. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Ambient temperature" means the atmospheric temperature surrounding or encircling shell eggs;

(2) "Candle" means to determine the interior quality based on the use of a candling light as defined in the United States standards;

(3) "Case" means a container of thirty (30) dozen shell eggs;

(4) "Consumer" means any person using eggs for food and shall include restaurants, hotels, cafeterias, hospitals, state institutions, and any other establishments serving food to be consumed or produced on the premises, but shall not include the armed forces or any other federal agency or institution;

(5) "Container" includes any carton, basket, case, cart, pallet, or other receptacle:

(A) "Immediate container" means any consumer package or other container in which shell eggs, not consumer-packaged, are packed; and

(B) "Shipping container" means any container used in packing shell eggs packaged in an immediate container.

(6) "Dealer-wholesaler" means a person engaged in the business of buying eggs from producers or other persons on his or her own account and selling or transferring eggs to other dealer-wholesalers, processors, retailers, or other persons and consumers. A dealer-wholesaler further means a person engaged in producing eggs from his or her own flock and disposing of any portion of this production on a graded basis;

(7) "Denatured" means rendering unfit for human food by treatment or the addition of a foreign substance as approved by the Administrator of the Agricultural Marketing Service United States Department of Agriculture;

(8) "The Egg Products Inspection Act" means Pub. L. 91-597, Egg Products Inspection Act, dated December 29, 1970;

(9) "Eggs" means the products of the domesticated chicken hen and any other eggs offered for sale for human consumption;

(10) "Inedible and unfit for human food" means eggs described as black rots, white rots, mixed rots or addled eggs, sour eggs, eggs with green whites, eggs with stuck yolks, moldy eggs, musty eggs, eggs showing blood rings, eggs containing embryo chicks at or beyond the blood ring stage, and any eggs that are adulterated as that term is defined in the Food, Drug, and Cosmetic Act, § 20-56-201 et seq.;

(11) "Packer" means any person who grades, sizes, candles, and packs eggs for purposes of resale;

(12) "Person" means any individual, partnership, association, business trust, corporation, or any organized group of persons, whether incorporated or not;

(13) "Possession" means that the fact of possession by any person engaged in the sale of a commodity is prima facie evidence that the commodity is for sale;

(14) "Processor" means a person who operates a plant for the purpose of breaking eggs for freezing, drying, or commercial food manufacturing;

(15) "Retailer" means any person who sells eggs to a consumer; and

(16) "Sell" means to offer for sale, expose for sale, have in possession for sale, exchange, barter, or trade.

History. Acts 1969, No. 220, § 2; 1985, No. 301, § 1; A.S.A. 1947, § 82-1302; Acts 1993, No. 115, § 1.

U.S. Code. The Egg Products Inspec-

tion Act, Pub. L. 91-597, referred to in this section, is codified as 21 U.S.C. § 1031 et seq.

20-58-203. Applicability.

This subchapter shall be applicable to all retailers of eggs except that retailers shall be permitted to sell eggs when the eggs are purchased directly from producers who own fewer than two hundred (200) hens provided that the following requirements are met:

(1) The eggs are washed and clean;

(2) The eggs are prepackaged and identified as ungraded with the name and address of the producer;

(3) The used cartons are not used unless all brand markings and other identification are obliterated; and

(4) The eggs are refrigerated and maintained at a temperature of forty-five degrees Fahrenheit (45° F) or below.

History. Acts 1969, No. 220, § 3; A.S.A. 1947, § 82-1303; Acts 1997, No. 700, § 1.

Amendments. The 1997 amendment rewrote this section.

20-58-204. Penalties.

(a) Any person, firm, or corporation violating any of the provisions of this subchapter or regulations of the Arkansas Livestock and Poultry Commission shall be guilty of a misdemeanor and shall upon conviction:

(1) For the first offense be fined not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100);

(2) For the second offense be fined not less than one hundred dollars (\$100) nor more than two hundred fifty dollars (\$250);

(3) For the third offense be fined not less than two hundred fifty dollars (\$250) nor more than five hundred dollars (\$500).

(b) In addition to fines, in the discretion of the court:

(1) For the first offense, his or her permit may be suspended not more than thirty (30) days;

(2) For the second offense, his or her permit may be suspended not more than sixty (60) days; and

(3) For the third offense or any subsequent offense, his or her grading and packing permit may be revoked.

(c) Public notice shall be made upon conviction of violation under this subchapter.

History. Acts 1969, No. 220, § 19;
A.S.A. 1947, § 82-1322.

20-58-205. Employees of Arkansas Livestock and Poultry Commission — Powers and duties.

All duties and functions required to be performed by the Arkansas Livestock and Poultry Commission under the provisions of this subchapter shall be performed by the commission or its authorized employees.

History. Acts 1969, No. 220, § 16;
A.S.A. 1947, § 82-1319.

20-58-206. Arkansas Livestock and Poultry Commission — Establishment of standards.

(a) The Arkansas Livestock and Poultry Commission shall establish standards for the grading, classification, and marking of shell eggs bought and sold by any person, firm, or corporation in the State of Arkansas.

(b) The standards shall, on the date of the sale to the consumer, conform to the minimum standards promulgated by the United States Department of Agriculture as defined in the "United States Standards, Grades and Weight Classes for Shell Eggs", authorized under 7 U.S.C. § 1624, effective July 11, 1952, and amendments thereto.

(c) The standards of quality of the United States Department of Agriculture are adopted as the standards of quality for the enforcement of this subchapter. Any egg described by the United States Department of Agriculture as being inedible shall be deemed inedible under the provisions of this subchapter.

History. Acts 1969, No. 220, §§ 7, 23;
A.S.A. 1947, §§ 82-1307, 82-1308.

20-58-207. Prohibited acts.

(a) No person, firm, or corporation shall sell, traffic in, or deliver to the retail or consuming trade any eggs unfit for human food.

(b) It shall be unlawful to:

(1) Prepare, pack, place, deliver for shipment, deliver for sale, load, ship, transport, sell in bulk or containers, or advertise by sign, placard, or otherwise any eggs for human consumption which are mislabeled or deceptive or that are or contain inedible eggs not denatured or eggs that have been incubated;

(2) Use descriptive terminology as to eggs that have not been graded and sized according to the standards set forth by the Arkansas Livestock and Poultry Commission; or

(3) Use descriptive terminology such as “fresh”, “farm”, “country”, etc. or to represent the same to be “fresh” any eggs excepting those eggs that meet the minimum requirements of Grade A or higher according to the standards set forth by the commission.

(c) No eggs shall be sold for resale to consumers below U.S. Consumer Grade B.

(d) All restaurants, hotels, hospitals, and other eating establishments which knowingly purchase, sell, serve, or use in food preparation eggs below U.S. Consumer Grade B quality will be in violation of this subchapter.

History. Acts 1969, No. 220, §§ 4, 14, 18; A.S.A. 1947, §§ 82-1304, 82-1315, 82-1321; Acts 1997, No. 700, § 2.

Amendments. The 1997 amendment added (d).

20-58-208. Display of grade and size required.

(a) All eggs advertised or displayed for sale for human food shall designate the correct grade and size. The designation shall also appear on the exterior of the container in which the eggs are offered for sale.

(b) Restaurants, hotels, and other eating places using eggs below “A” quality shall be required to display a placard of heavy cardboard of not less than eight inches by eleven inches (8" × 11"), stating the quality and weight of the eggs used by the establishment in a location where it can easily be seen by the customers or, in lieu thereof, place this information on the menu.

History. Acts 1969, No. 220, § 8; 1985, No. 301, § 2; A.S.A. 1947, § 82-1309.

20-58-209. Packing and grading permit.

(a) All packing and grading permits shall be conspicuously posted in the place of business to which they apply.

(b) The permit year shall be twelve (12) months or any fraction thereof beginning July 1 and ending June 30 of each year.

(c) No permit shall be transferable, but it may be moved from one (1) place to another with the consent of the Arkansas Livestock and Poultry Commission.

(d) No person shall operate a shell egg processing plant and egg candling room or an egg breaking plant before the plant or room has been approved by the commission or its authorized agent and a permit issued.

History. Acts 1969, No. 220, § 12; 1970 (Ex. Sess.), No. 12, § 1; A.S.A. 1947, § 82-1317.

20-58-210. Refrigeration of eggs — Temperature and labeling requirements.

(a) All shell eggs packed in containers for the purpose of resale to consumers shall be stored and transported under refrigeration at an ambient temperature no greater than forty-five degrees Fahrenheit (45° F) or seven and two-tenths degrees Celsius (7.2° C).

(b) All shell eggs that are packed into containers for the purpose of resale to the consumer shall be labeled with the following statement: "Keep refrigerated at or below 45 degrees Fahrenheit".

(c) Every person, firm, or corporation selling eggs for the purpose of resale to the consumer must store and transport shell eggs under refrigeration at an ambient temperature no greater than forty-five degrees Fahrenheit (45° F) or seven and two-tenths degrees Celsius (7.2° C), and all containers of eggs must be labeled with the following statement: "Keep refrigerated at or below 45 degrees Fahrenheit". This includes retailers, institutional users, dealer-wholesalers, food handlers, transportation firms, or any person who delivers to the retail or consuming trade.

(d) Packers shall not be responsible for the interior quality of eggs unless all recommended handling procedures in this section are followed by all parties after the sale of the eggs by the packer.

History. Acts 1969, No. 220, § 15;
A.S.A. 1947, § 82-1316; Acts 1993, No.
115, § 2.

20-58-211. Sales to retailers or manufacturers.

(a) Every person, firm, or corporation selling eggs to a retailer or manufacturer shall furnish an invoice showing the size and quality of the eggs according to the standards prescribed by this subchapter together with the name and address of the person by whom the eggs were sold.

(b) This invoice shall be retained for two (2) years.

History. Acts 1969, No. 220, § 6;
A.S.A. 1947, § 82-1306.

20-58-212. Retail sales.

(a) Any and all eggs offered for sale at retail shall be prepackaged.

(b) All eggs offered for sale at retail shall be plainly marked as to grade and size with letters not less than three-eighths inch ($\frac{3}{8}$ ") in height.

(c) Each container of eggs offered for sale at retail shall bear on the exterior of the container the following:

(1) The identity of the packer must be by registry of United States Department of Agriculture plant number or by state permit number or name of packer;

(2) The date the eggs were packed; and

(3) The correct grade and size of the eggs.

History. Acts 1969, No. 220, §§ 9-11;
A.S.A. 1947, §§ 82-1310 — 82-1312.

20-58-213. Possessor of eggs deemed owner — Exceptions.

All eggs shall be considered the property of the person in whose possession they are found except those in the custody of common carriers or a public warehouse where the owner is identified by record.

History. Acts 1969, No. 220, § 5;
A.S.A. 1947, § 82-1305.

20-58-214. Enforcement.

(a)(1) The Arkansas Livestock and Poultry Commission shall enforce the provisions of this subchapter and is authorized to make and promulgate such regulations as may be necessary thereto.

(2) The regulations shall be publicized and become effective ninety (90) days after adoption.

(b)(1) The commission and its authorized employees or agents are authorized to enter any store, vehicle, market, or any other business or place where eggs are bought, stored, sold, offered for sale, or processed. The commission is authorized to make such inspections as needed of eggs to determine if the grades of the eggs conform to grades as labeled on the exterior of the container.

(2) If the inspection determines that the eggs in the container do not conform to the grade as labeled on the exterior of the container, the commission or its employees or agents are authorized to examine the invoices and such other records as are needed to determine the cause and place of the violation of the regulation of this subchapter.

(c) The commission and its authorized employees shall have the power to stop sale of and impound for evidence any containers of eggs offered for sale which are in conflict with any provisions of this subchapter.

History. Acts 1969, No. 220, § 17;
A.S.A. 1947, § 82-1320.

20-58-215. Inspection fees.

(a) For the purpose of financing the administration and enforcement of this subchapter, the State of Arkansas, through the Arkansas Livestock and Poultry Commission, shall collect an inspection fee from the processor, packer, or dealer-wholesaler, or from any of them.

(b) The inspection fee and annual permit fee will be set by the commission after review and consultation with the Arkansas Poultry Federation for all shell eggs and egg products processed or sold in the State of Arkansas.

(c) All fees, interest, penalties, or costs collected by the commission as authorized in this section shall be deposited in the State Treasury within thirty (30) days of collection thereof.

(d) Upon receipt of the funds, the Treasurer of State shall, after deducting therefrom the collection charge authorized by law, credit the net amount thereof to the credit of the fund to be known as the Poultry and Egg Grading Fund, to be used for consumer merchandising, consumer education, maintenance, operation, and other expenses of all functions imposed by the provisions of this subchapter.

History. Acts 1969, No. 220, § 13; 1970 (Ex. Sess.), No. 12, § 2; 1985, No. 301, § 3; A.S.A. 1947, § 82-1314.

20-58-216. Audits.

(a) Annual audits of all permit holders, including out-of-state permit holders, will be performed by the Arkansas Livestock and Poultry Commission to ensure proper reporting of egg inspection fees.

(b)(1) Travel expenses incurred in conducting out-of-state audits are to be reimbursed to the commission by out-of-state permit holders.

(2) The State of Arkansas' out-of-state daily allowance for meals and lodging will be the maximum amount reimbursable, plus travel expenses to and from locations of permit holders.

History. Acts 1969, No. 220, § 24, as added by Acts 1985, No. 301, § 4; A.S.A. 1947, § 82-1323.

CHAPTER 59

MILK AND DAIRY PRODUCTS

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. REGULATION OF MANUFACTURE AND SALE GENERALLY.
3. MELLORINE.
4. GRADE "A" MILK PROGRAM ACT.
5. GRADE "A" MILK PROGRAM ADVISORY COMMITTEE.
6. PURCHASES BY MILK PROCESSORS.
7. MILK LABORATORY ANTIBIOTIC DRUG.

RESEARCH REFERENCES

Am. Jur. 35A *Am. Jur.* 2d, Food, § 47 et seq. **C.J.S.** 36A *C.J.S.*, Food, §§ 6(4), 14(2).

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

20-59-101. Division of Sanitarian Services — Regulatory powers and duties.

20-59-102. Division of Sanitarian Ser-

vices — Ownership of Little Rock Milk Program assets.

A.C.R.C. Notes. Acts 1991, No. 865, provided:

“Section 1. The purpose of this act is to establish the Arkansas Milk Marketing Study Committee to study the current crisis of Arkansas dairy farmers in the national and international markets of dairy products.

“Section 2. (a) There is hereby created the Arkansas Milk Marketing Study Committee.

“(b) The committee shall be comprised of not more than eight (8) members, four (4) members of the Senate and four (4) members of the House of Representatives.

“(c)(1) The Senate members shall be appointed by the President Pro Temp of the Senate from membership whose districts have constituents involved in the dairy industry of this state.

“(2) The House members shall be appointed by the Speaker of the House from membership whose districts have constituents involved in the dairy industry of this state.

“(d) The committee shall be assisted by staff provided by the Bureau of Legislative Research.

“(e) Members of the committee shall be entitled to receive per diem and expenses for their attendance at committee meetings at the same rate as members of the General Assembly receive for attendance of Joint Interim Committees.

“Section 3. (a) The Committee shall have the authority and the responsibility to make a thorough study of national and international marketing of dairy products, an analysis of pricing in those markets, a review of federal programs which result in increases in prices for dairy products and any such other matters as the committee deems necessary.

“(b) The committee shall make appropriate recommendations regarding state or federal actions necessary to relieve the crisis of the dairy farmers of this state.

“Section 4. The Arkansas Milk Marketing Study Committee shall begin holding meetings within sixty (60) days after the adjournment of the regular session of the 78th General Assembly and shall file a report of its findings and recommendations with the Arkansas Legislative Council and the Joint Interim Committee on Agriculture and Economic Development of the Arkansas General Assembly on or before December 31, 1991.

“Section 5. The provisions of this act shall expire on December 31, 1991.

“Section 6. All provisions of this act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

“Section 7. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

“Section 8. All laws and parts of laws in conflict with this act are hereby repealed.

“Section 9. It is hereby found and determined by the General Assembly that it is essential to the well-being of the people of Arkansas and to the future of the dairy farmers in the State; that it is urgent that a study be made as soon as possible of the current crisis affecting milk producers in this State; that this Act is designed to establish a committee to conduct such a study and to make a report of its findings to the Arkansas Legislative Council and the Joint Interim Committee on Agriculture and Economic Development on or before December 31, 1991 and; that this Act should be given effect immediately to enable the Committee to begin its study and deliberations as soon as possible. Therefore, an emergency is hereby de-

clared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Effective Dates. Acts 1977, No. 409, § 7: July 1, 1977. Emergency clause provided: "It is hereby found and determined by the Seventy-First General Assembly

that the Arkansas Milk Program is a worthwhile program and is necessary for the inspection of milk producers, distributors and processors. Therefore, an emergency is declared to exist and this Act being necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after July 1, 1977."

20-59-101. Division of Sanitarian Services — Regulatory powers and duties.

(a) The Division of Sanitarian Services shall assume all regulatory duties, powers, and responsibilities now exercised by the various city or county health departments of the State of Arkansas pertaining to production and distribution of Grade "A" milk and milk products.

(b) The division shall provide permits and inspection and laboratory services to all the milk producers, processors, and distributors.

History. Acts 1977, No. 409, § 1; A.S.A. 1947, § 82-4001.

20-59-102. Division of Sanitarian Services — Ownership of Little Rock Milk Program assets.

The Division of Sanitarian Services may accept ownership of any or all office equipment, laboratory equipment, automobiles, and fund balances as may be made available from the Little Rock Milk Program.

History. Acts 1977, No. 409, § 3; A.S.A. 1947, § 82-4003.

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- 20-59-248. Incidental sales of goat milk not prohibited.

Cross References. Licenses and permits, removal of disqualification for criminal offenses, § 17-1-103.

Milk, unfair practices, § 4-75-801 et seq.

Production, processing, and sale of milk regulated by municipality, § 14-54-1201 et seq.

Effective Dates. Acts 1941, No. 114, § 8: became law without Governor's signature, Mar. 4, 1941. Emergency clause provided: "Therefore, it is hereby declared to be a fact that there is an urgent demand for this law due to the wide spread insanitary conditions existing throughout the state. That the public safety, convenience, health and welfare is gravely concerned under present and existing laws. This law is necessary for the preservation of the public peace, health and safety of people throughout this state, therefore, an emergency is hereby declared to exist and this

act shall be in full force and effect from and after its passage."

Acts 1953, No. 416, § 15: effective 60 days after becoming law.

Acts 1983, No. 289, § 2: Feb. 25, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that the statutory definition of "whole milk" contained in subsection (1) of subheading A of Section 1 of Act 114 of 1941, as amended, does not conform to the definition of whole milk in United States Government standards, and does not conform to the standards promulgated by the Arkansas Department of Health, for whole milk, and that the immediate passage of this Act is necessary to bring the statutory definition of whole milk into compliance with United States Government regulations and Arkansas Department of Health standards. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the immedi-

ate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 534, § 4: Apr. 1, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that due to current economic conditions, budgetary constraints may limit the ability of the Department of Health to adequately provide needed services unless some license fees are increased; that it is most equitable to make this increase effective immediately upon passage of this Act. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1989, No. 27, § 4: Feb. 7, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that the dairy industry of Arkan-

sas is essential to the public health, safety and welfare of the people of this State, and is vital to the economy of this State; that due to changes and innovations in the dairy products industry and the development of the fast foods industry, it is essential that the State Board of Health be given the power to change and correct rules and regulations pertaining to milk, cream, and other milk products and frozen desserts, as may be necessary to correspond to and coincide with changes made in federal standards for such products, in order to enable the dairy products industry in this State to remain competitive with other states, and to assure the preservation of the safety and health of the people of this State. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

20-59-201. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) MILK. (A) "Whole milk" means the lacteal secretion obtained by the complete milking of one (1) or more healthy cows, properly fed and kept, excluding that obtained within fifteen (15) days before or five (5) days after calving or such longer period as may be necessary to render the milk practically colostrum free, and when offered for sale must contain not less than three and one-fourth percent ($3\frac{1}{4}\%$) of butterfat, and eight and one-fourth percent ($8\frac{1}{4}\%$) solids not fat;

(B) Milk for manufacturing purposes may contain less than three and one-fourth percent ($3\frac{1}{4}\%$) of butterfat but must be delivered pure, sweet, and clean;

(C) "Skimmed milk" means milk from which a sufficient portion of milk fat has been removed to reduce its milk fat percentage to less than three and one-fourth percent ($3\frac{1}{4}\%$); and

(D) "Cream" means that portion of milk rich in butterfat which rises to the surface of the milk on standing or is separated from it by centrifugal force, containing not less than eighteen percent (18%) of butterfat;

(2) DAIRY PRODUCTS. "Dairy products or milk products" means the pure, clean, and wholesome milk, cream, pure milk fat, butter, cheese, ice cream, ice cream mix, evaporated milk, skimmed milk, condensed milk, sweetened condensed milk, condensed skimmed milk, sweetened condensed skimmed milk, dried milk, dried skimmed milk, or any derivatives of milk or combination of products made from milk;

(3) **CHEESE.** (A) "Cheese" means the product made from the separated curd obtained by coagulating the casein of milk, skimmed milk, or milk enriched with cream. The coagulation is accomplished by means of rennet or other suitable enzyme, lactic fermentation, or by a combination of any two (2) processes. The curd may be modified by heat, pressure, ripening ferments, special molds, or suitable seasoning. Certain varieties of cheese are made from the milk of animals other than the cow, and any cheese defined in this subchapter may contain added coloring matter. The name "cheese" unqualified means cheddar cheese, American cheese, or American cheddar cheese;

(B) "Cheddar cheese", or "American cheese", "American cheddar cheese" means the cheese made by the cheddar process from heated and pressed curd obtained by the action of rennet on milk. It contains not more than thirty-nine percent (39%) water and in the water-free substance, not less than fifty percent (50%) of milk fat;

(C) "Skim milk cheese" means cheese made from milk, the finished product of which contains less than fifty percent (50%) of butterfat based on the moisture-free substance or contains more than thirty-nine percent (39%) moisture;

(D) "Pasteurized cheese" or "pasteurized-blended cheese" means the pasteurized product made by comminuting and mixing, with the aid of heat and water, one (1) or more lots of cheese into a homogeneous, plastic mass. The unqualified name "pasteurized cheeses" or "pasteurized-blended cheese" is understood to mean pasteurized cheddar cheese or pasteurized blended cheddar cheese and applies to a product which conforms to the standard for cheddar cheese. Pasteurized cheese or pasteurized-blended cheese, bearing a varietal name, is made from cheese of the variety indicated by the name and conforms to the limits for fat and moisture for cheese of that variety;

(E) "Process cheese" means the modified cheese made by comminuting and mixing one (1) or more lots of cheese into a homogeneous plastic mass, with the aid of heat, with or without the addition of water, and with the incorporation of not more than three percent (3%) of a suitable emulsifying agent. The name "process cheese", unqualified, is understood to mean process cheddar cheese and applies to a product which contains not more than forty percent (40%) water and, in the water-free substance, not less than fifty percent (50%) milk fat. Process cheese, qualified by a varietal name, is made from cheese of the variety indicated by the name and conforms to the limits for fat and moisture for cheese of that variety;

(F) "Casein" means that product made from skimmed milk or buttermilk, obtained by precipitating the casein by the addition of acids or whey. The casein may be subsequently washed, ground, and dried; and

(G) "Whey" means the product remaining after the removal of fat and casein from milk in the process of cheese making;

(4) **ICE CREAM — FROZEN DESSERTS AND DRINKS.** (A) "Frozen desserts" means ice cream, ice cream mix, frozen malted milk, frozen custard,

ice milk, milk sherbets, ice or ice sherbets, and imitation ice cream as defined in this subchapter when manufactured for commercial purposes;

(B) "Ice cream" means the pure, clean, frozen product made from a combination of two (2) or more of the following ingredients: milk products, eggs, egg products, water, and sugar with harmless flavoring and with or without harmless coloring and with or without added stabilizer composed of wholesome edible material. It contains not more than one-half of one percent ($\frac{1}{2}$ of 1%) by weight of stabilizer, not less than ten percent (10%) by weight of milk fat, and not less than eighteen percent (18%) by weight of total milk solids. However, when fruit, fruit juices, nuts, cocoa or chocolate, chocolate syrup, maple syrup, cakes or confections, or other wholesome pure food products are used for the purpose of flavoring, then it shall not contain less than ten percent (10%) by weight of milk fat and not less than eighteen percent (18%) by weight of total milk solids, except for such reduction in milk fat and in total milk solids, as is due to the addition of the flavoring. In no such case shall it contain less than eight percent (8%) by weight of milk fat nor less than fourteen percent (14%) by weight of total milk solids. In no case shall any ice cream contain less than one and six-tenths pounds ($1\frac{6}{10}$ lbs.) of total food solids per gallon;

(C) "Ice cream mix" means a product which results from the mixture of pure clean dairy products, sugar, and other products allowed in the use of ice cream and with or without harmless flavoring and coloring. In no case shall ice cream mix contain less than ten percent (10%) by weight of milk fat and not less than eighteen percent (18%) by weight of total milk solids. When fruit, nuts, cocoa or chocolate, maple syrup, cakes, or confections are used for the purpose of flavoring, then it shall not contain less than ten percent (10%) by weight of milk fat and not less than eighteen percent (18%) by weight of total milk solids, except for such reduction in milk fat and in total milk solids as is due to the addition of the flavoring, but in no case shall it contain less than eight percent (8%) by weight of milk fat nor less than fourteen percent (14%) by weight of total milk solids;

(D) "Frozen malted milk" means the pure, clean, semifrozen product made from the combination of milk products, malted milk, and one (1) or more of the following ingredients: eggs, sugar, dextrose, and honey, with or without flavoring and coloring and with or without edible gelatin or vegetable stabilizer; and in the manufacture of which freezing has been accompanied by agitation of the ingredients. It contains not more than one-half of one percent ($\frac{1}{2}$ of 1%) by weight of edible gelatin or vegetable stabilizer, not less than three percent (3%) by weight of milk fat, nor more than ten percent (10%) by weight of total milk solids, and not less than one-half of one percent ($\frac{1}{2}$ of 1%) by weight of malted milk. In no case shall frozen malted milk contain less than one and three-tenths pounds ($1\frac{3}{10}$ lbs.) of total food solids per gallon;

(E) "Fountain malted milk" means the pure, clean, semifrozen product made from the combination of milk products, malted milk, and one (1) or more of the following ingredients: eggs, sugar, dextrose, and honey, with or without flavoring and coloring and with or without edible gelatin or vegetable stabilizer; and it contains not more than one-half of one percent ($\frac{1}{2}$ of 1%) by weight of edible gelatin or vegetable stabilizer, not less than four percent (4%) by weight of milk fat, not less than twelve percent (12%) by weight of total milk solids, and not less than one-half of one percent ($\frac{1}{2}$ of 1%) by weight of malted milk;

(F) "Frozen custard" means French ice cream, French custard ice cream, ice custard, parfaits, and similar frozen products. Frozen custard is a clean wholesome product made from a combination of two (2) or more of the following ingredients: milk products, eggs, water, and sugar, with harmless flavoring and with or without harmless coloring and with or without added stabilizers composed of wholesome edible material. It contains not more than one-half of one percent ($\frac{1}{2}$ of 1%) by weight of stabilizer, not less than ten percent (10%) by weight of milk fat, and not less than fourteen percent (14%) by weight of total milk solids. Frozen custard shall contain not less than two and one-half ($2\frac{1}{2}$) dozen of clean, wholesome egg yolks, or three-fourths pounds ($\frac{3}{4}$ lbs.) of wholesome, dry egg yolk containing not to exceed seven percent (7%) of moisture, or one and one-half pounds ($1\frac{1}{2}$ lbs.) of wholesome frozen egg yolk containing not to exceed fifty-five percent (55%) of moisture, or the equivalent of egg yolk in any other form, for each ninety pounds (90 lbs.) of frozen custard. In no case shall any frozen custard contain less than one and six-tenths pounds ($1\frac{6}{10}$ lbs.) of total food solids per gallon;

(G) "Ice milk" means the pure, clean, frozen product made from a combination of two (2) or more of the following ingredients: milk products, eggs, water, and sugar, with harmless flavoring and with or without added stabilizer composed of wholesome, edible material, and with or without harmless coloring. It contains not more than one-half of one percent ($\frac{1}{2}$ of 1%) by weight of stabilizers, not less than three percent (3%) and not more than ten percent (10%) by weight of milk fat and not less than fourteen percent (14%) by weight of total milk solids. In no case shall any ice milk contain less than one and three-tenths pounds ($1\frac{3}{10}$ lbs.) of total food solids per gallon;

(H) "Milk sherbet" means the pure, clean, frozen product made from milk products, water, and sugar, with harmless fruit, fruit acid, or fruit juice flavoring, and with or without harmless coloring, and with not less than thirty-five hundredths of one percent ($\frac{35}{100}$ of 1%) of acid as determined by titrating with standard alkali and expressed as lactic acid, and with or without added stabilizer composed of wholesome, edible material. It contains not less than four percent (4%) by weight of milk solids;

(I) "Ice or ice sherbet" means the pure, clean, frozen product made from water and sugar with harmless fruit or fruit juice flavoring, with

or without harmless coloring and with or without milk products and with not less than thirty-five hundredths of one percent ($\frac{35}{100}$ of 1%) of acid as determined by titrating with standard alkali and expressed as lactic acid, and with or without added stabilizer composed of wholesome, edible material. It contains less than four percent (4%) by weight of milk solids; and

(J) "Imitation ice cream" means any frozen substance, mixture, or compound, regardless of the name under which it is represented, which is made in imitation or semblance of ice cream or is prepared or frozen as ice cream is customarily prepared or frozen, and which is not ice cream, frozen custard, ice milk, frozen malted milk, sherbet, or ice as defined in this law. No person shall sell imitation ice cream. However, "mellorine" and "mellorine mix" defined in subdivision (4)(J)(i)(a) of this section shall not be construed to be "imitation ice cream", and nothing in this subchapter shall be construed to prevent or prohibit the manufacture or sale of "mellorine" and "mellorine mix" as defined:

(i)(a) DESCRIPTION. (1) Mellorine is a food produced by freezing, while stirring, a pasteurized mix consisting of safe and suitable ingredients, including, but not limited to, milk-derived nonfat solids and animal or vegetable fat, or both, only part of which may be milk fat. Mellorine is sweetened with nutritive carbohydrate sweetener and is characterized by the addition of flavoring ingredients. Mellorine mix is a mix composed of the ingredients which are frozen to produce mellorine;

(2) Mellorine contains not less than one and six-tenths pounds ($1\frac{6}{10}$ lbs.) of total solids to the gallon, and weighs not less than four and one-half pounds ($4\frac{1}{2}$ lbs.) to the gallon. Mellorine mix contains not less than three and two-tenths pounds ($3\frac{2}{10}$ lbs.) of total food solids and shall weigh not less than nine pounds (9.0 lbs.) per gallon. Mellorine or mellorine mix contains not less than six percent (6%) fat and two and seven-tenths percent ($2\frac{7}{10}\%$) protein having a protein efficiency ratio (PER) not less than that of whole milk protein (one hundred eight percent (108%) of casein) by weight of the food, exclusive of the weight of any bulky flavoring ingredients used. In no case shall the fat content of the finished food be less than four and eight-tenths percent ($4\frac{8}{10}\%$) or the protein content be less than two and two-tenths percent ($2\frac{2}{10}\%$). The protein to meet the minimum protein requirements shall be provided by milk solids, not fat or other milk-derived ingredients; and

(3) When calculating the minimum amount of fat and protein required in the finished food, the solids of chocolate or cocoa used shall be considered a bulky flavoring ingredient. In order to make allowance for additional sweetening ingredients needed when certain bulky ingredients are used, the weight of chocolate or cocoa solids used may be multiplied by two and one-half ($2\frac{1}{2}$); the weight of fruit or nuts used may be multiplied by one and four-tenths ($1\frac{4}{10}$); and the weight of partially or wholly dried fruits or fruit juices may be

multiplied by appropriate factors to obtain the original weights before drying and this weight may be multiplied by one and four-tenths ($1\frac{4}{10}$);

(b) FORTIFICATION. Vitamin A is present in a quantity which will ensure that forty (40) international units (IU) are available for each gram of fat in mellorine or mellorine mix within limits of good manufacturing practice;

(c) METHODS OF ANALYSIS. Fat and protein content and the protein efficiency ratio shall be determined by the following methods contained in the latest edition of *Official Methods of Analysis of the Association of Official Analytical Chemists*;

(1) Fat content shall be determined by either the Babcock method or such method of testing as may be approved by the American Association of Agricultural Chemists or the American Dairy Science Association;

(2) Protein content shall be determined by one (1) of the following methods: "Nitrogen — Official Final Action", Kjeldahl Method, Section 16.226, or Dye Binding Method, Section 16.227; and

(3) Protein efficiency ratio shall be determined by this method: "Biological Evaluation of Protein Quality — Official Final Action" Sections 39-166 — 39-170;

(d) NOMENCLATURE. The name of the food is "mellorine". The name of the mix which is frozen to produce mellorine is "mellorine mix". The name of the food or mix on the label shall be accompanied by a declaration indicating the presence of characterizing flavoring; and

(e) LABEL DECLARATION. The common or usual name of each of the ingredients used shall be declared on the label, except that sources of milk fat or milk solids not fat may be declared, in descending order of predominance, either by the use of the term "milk fat" or "nonfat milk";

(ii) For the purpose of this definition and standard of identity, food fats are edible natural fats derived from vegetable sources including only such milk fat as is normally contained in the products enumerated in subdivision (iii) of this section. Harmless optional ingredients may be used to prevent fat oxidation in an amount not exceeding five one-thousandths of one percent ($\frac{5}{1000}$ of 1%) of the weight of the fat used. No edible vegetable oil shall be used which does not meet the standards prescribed by the federal Food, Drug, and Cosmetic Act;

(iii) "Milk solids not fat" shall mean and include skim milk, evaporated or condensed concentrated skim milk, superheated condensed skim milk, sweetened condensed skim milk, nonfat dry milk solids, edible dry whey, cheese whey, sweet cream buttermilk, whether fluid, condensed, or dried, and any of the foregoing products from which all or a portion of the lactose has been removed after crystallization or the lactose has been converted to simple sugars by hydrolysis;

(iv) "Sugar" or "other sweeteners" shall mean and include sugar, liquid sugar, dextrose, which is paste or syrup, invert sugar, lactose,

corn sugar, dried or liquid corn syrup, maple sugar, honey, brown sugar, malt syrup, dried malt extract, and molasses, other than blackstrap;

(v) "Flavors" shall mean and include:

(a) Natural food flavoring;

(b) Artificial food flavoring;

(c) Fruit juice, which may be sweetened and thickened with stabilizer;

(d) Chocolate;

(e) Cocoa;

(f) Fruit which may be fresh, frozen, canned, concentrated, shredded, pureed, comminuted, or dried and which may be sweetened, thickened with stabilizer, and may be acidulated with citric, tartaric, malic, lactic, or ascorbic acid;

(g) Nut meats; and

(h) Confectionery; and

(vi) "Stabilizers" shall mean and include gelatins, algin, extractive of Irish moss, psyllium seed husk, agar-agar, gum acacia, gum karaya, locust bean gum, gum tragacanth, cellulose gum, guar seed, gum, monoglycerides, or diglycerides, both of fat-forming fatty acids or other harmless stabilizer or emulsifier;

(5) MISCELLANEOUS PRODUCTS. Varieties, types, and kinds of milk and dairy products which are not defined in this section shall be manufactured and marketed under the standards of composition promulgated by the federal Bureau of Standards of the United States Food and Drug Administration, or may be promulgated by the Director of the Department of Health under authority vested in him or her to make and promulgate rules and regulations;

(6) PASTEURIZATION. "Pasteurization" is defined to mean the heating of every particle of the milk, cream, ice cream mix, or milk products used in the manufacture of ice cream or butter to a temperature of at least one hundred forty-five degrees Fahrenheit (145° F) and held at the temperature for thirty (30) minutes, provided that any other method of pasteurization which has been proved of equal value may be used when approved by the American Dairy Science Association. Frozen dessert pasteurization vats shall be provided with recording thermometers and charts filed for record;

(7) CONDENSED OR EVAPORATED MILK. (A) "Condensed milk", "evaporated milk", or "concentrated milk" is that product resulting from the evaporation of a considerable portion of the water from whole, fresh, clean milk, and contains, all tolerances being allowed for, not less than twenty-five and one-half percent (25½%) of total solids and not less than seven and nine-tenths percent (7⅞%) of milk fat;

(B) "Sweetened condensed milk", "sweetened evaporated milk", or "sweetened concentrated milk" is the product resulting from the evaporation of a considerable portion of the water from whole, fresh, clean milk, to which sugar or sucrose has been added. It contains, all tolerances being allowed for, not less than twenty-eight percent (28%) of total milk solids and not less than eight percent (8%) of milk fat;

(C) "Condensed skimmed milk", "evaporated skimmed milk", or "concentrated skimmed milk" is the product resulting from the evaporation of a considerable portion of the water from skimmed milk which contains, all tolerances being allowed for, not less than twenty percent (20%) of milk solids; and

(D) "Sweetened condensed skimmed milk", "sweetened evaporated skimmed milk", or "sweetened concentrated skimmed milk" is the product resulting from the evaporation of a considerable portion of the water from skimmed milk to which sugar or sucrose has been added. It contains, all tolerances being allowed for, not less than twenty-eight percent (28%) of milk solids;

(8) BUTTER. (A) "Butter" is the food product usually known as butter and which is made exclusively from milk or cream or both with or without common salt and with or without additional coloring matter to contain not less than eighty percent (80%) by weight of milk fat, all tolerances being allowed for;

(B) "Renovated or process butter" is the product made by melting butter and reworking, without the addition or use of chemicals or any substances except milk, cream, or salt, containing not less than eighty percent (80%) of butterfat or made in accordance with such standards as shall be established by the United States Food and Drug Administration. Provided, that the amount of butterfat in the product of any one (1) manufacturer, or in any given quantity of butter, renovated, or process butter, shall be ascertained in the following manner:

(i) Three (3) samples shall be taken from three (3) different packages of any one (1) manufacturer or from any one (1) tub or churning of butter and a careful analysis made by the official method adopted by the Association of Agricultural Chemists; and

(ii) If this analysis shall show less than eighty percent (80%) of butterfat, butter or process butter thus analyzed shall be deemed adulterated butter, and the manufacturer shall be deemed guilty of a misdemeanor, and then the butter must be reworked before again being offered for sale;

Renovated or process butter may also contain harmless coloring matter.

(9) CREAM. (A) "Sour cream" is cream, the acidity of which is more than two-tenths of one percent ($\frac{2}{10}$ of 1%), expressed as lactic acid;

(B) "Sweet cream" when bought and sold for butter manufacturing purposes only, on a butterfat basis, shall consist of fresh, clean, fine-flavored cream, the acidity of which does not exceed two-tenths of one percent ($\frac{2}{10}$ of 1%) calculated as lactic acid;

(C) "First grade cream" when bought and sold for butter manufacturing purposes only, on a butterfat basis, shall consist of cream that is smooth, clean, free from undesirable odors and flavors, and shall contain not less than twenty-five percent (25%) of butterfat;

(D) "Second grade cream" when bought and sold for butter manufacturing purposes only, on a butterfat basis, shall consist of cream that is too old to grade as "first grade" and may contain objectionable flavors and odors in a moderate degree; and

(E) "Unlawful cream or milk" means cream or milk which contains dirt, filth, gasoline, kerosene, or other foreign matter, or which has been contaminated by insects, rodents, or other animals or that is stale, cheesy, rancid, putrid, decomposed, or is otherwise unfit for human consumption; and

(10) MISCELLANEOUS DEFINITIONS. (A) "Dairy products plants" shall include all places where dairy products, as defined in this subchapter, are bottled, processed, frozen, or manufactured;

(B) "Milk or cream station" shall be considered to mean any place where milk or cream may be received or purchased and held for shipment or delivery to a dairy products plant;

(C) "Truck route" shall be considered to mean any person, as defined in subdivision (G) of this subdivision, collecting cream or milk from the producer for the purpose of manufacture into butter, cheese, ice cream, condensed or powdered milk, or for bottled purposes;

(D) "Field superintendent" shall be considered to mean any qualified person who is the authorized representative of any person, firm, company, or corporation engaged in buying, selling, or manufacturing dairy products and who has supervision over the procurement of raw materials to be manufactured into dairy products;

(E) "Station operator" shall be considered to mean any person who performs the act of sampling or testing milk, cream, or other dairy products, the test of which is to be used as a basis for making payment for the products;

(F) "Cream or milk grader" shall be considered to mean any person who shall have passed a satisfactory examination as to his qualifications and to have actually demonstrated his ability before the director or his or her assistants, to determine the quality of cream or milk purchased for the purpose of manufacture into dairy products; and

(G) The term "person" shall be considered to include an individual, or a partnership, corporation, or association.

History. Acts 1941, No. 114, § 1; 1953, No. 416, § 1; 1979, No. 521, § 1; 1983, No. 289, § 1; A.S.A. 1947, § 82-912.

Publisher's Notes. Acts 1993, Nos. 610 and 624, § 1, provided: "The Arkansas Bureau of Standards, created by Act 482 of 1963, as amended, the same being A.C.A. 4-18-201 et seq., and its functions,

powers, duties, assets, properties, and appropriations are transferred by a type 2 transfer [see § 25-2-105] to the State Plant Board."

U.S. Code. The federal Food, Drug, and Cosmetic Act referred to in this section is codified as 21 U.S.C. § 301 et seq.

20-59-202. Penalties.

Any person, firm, or corporation shall be guilty of a misdemeanor and shall be fined a sum not less than twenty-five dollars (\$25.00) nor more than three hundred dollars (\$300) if that person, firm, or corporation shall:

(1) Hinder, obstruct, or in any way interfere with the Director of the Department of Health or his or her deputies while discharging the duties of inspection;

(2) In any way obstruct or hinder the director from carrying out the full meaning and intent of this subchapter;

(3) Refuse or fail to make the reports provided for by §§ 20-59-206 — 20-59-211 and 20-59-214 — 20-59-246;

(4) Refuse or neglect to conform to the rules and regulations of the Department of Health which have been published as provided in this subchapter regarding the care or condition of any animal kept for dairy purposes or for the sanitary conditions of any room, building, or place where dairy products are kept either for storage or for the purpose of sale and distribution; or

(5) Sell, exhibit, or offer for sale any dairy product which is adulterated.

History. Acts 1941, No. 114, § 5;
A.S.A. 1947, § 82-916.

20-59-203. Prosecutions.

All prosecutions brought for violations of the provisions of this subchapter shall be brought in any court having competent jurisdiction, and it shall be the duty of all prosecuting attorneys in whose county any violations may occur to attend and prosecute those cases, and for so doing they shall be entitled to the same fees as are now provided for like service in the same court.

History. Acts 1941, No. 114, § 7;
A.S.A. 1947, § 82-918.

CASE NOTES

Abatement of Nuisance.

The fact that an act constitutes a nuisance and is also a crime does not deprive the court of equity jurisdiction to abate

the nuisance when the public health and welfare is in danger. *State ex rel. Hale v. Lawson*, 212 Ark. 233, 205 S.W.2d 204 (1947).

20-59-204. State Board of Health — Appointment of deputies — Regulations and standards.

(a)(1) The State Board of Health is authorized and empowered to appoint such deputies and office assistants as in its judgment may be deemed necessary to fully carry out the provisions of this subchapter.

(2) The board is authorized and empowered to fix their compensation and to have full and complete control and supervision over them.

(b) The board is further authorized, when not inconsistent with this subchapter, to formulate and prescribe such reasonable rules and regulations and define and establish standards for dairy products included in this subchapter as may be deemed necessary to accomplish the purpose of this subchapter.

History. Acts 1941, No. 114, § 6;
A.S.A. 1947, § 82-917.

CASE NOTES

Regulations.

The legislature may delegate authority to a state board to promulgate reasonable

regulations designed to protect the public health. State ex rel. Hale v. Lawson, 212 Ark. 233, 205 S.W.2d 204 (1947).

20-59-205. Right of review.

(a) It shall be the duty of the State Board of Health and it is authorized and empowered through its constituted officers and agents as set out in this section to perform the following acts. However, any aggrieved party shall have the right to apply to the circuit court in the county of his or her residence for a review of any summary action on the part of the board or its agents and for this purpose service of process upon the Director of the Department of Health at any place in this state shall constitute valid service in the application for review:

(1) INSPECTION OF PLANTS. To inspect or cause to be inspected, as often as may be deemed practicable, all dairy products plants or any other places where dairy products are produced, manufactured, frozen, processed, kept, handled, stored, or sold within this state;

(2) PRODUCTION AND SALE PROHIBITED. To prohibit the production and sale of unclean, adulterated, unwholesome milk, cream, or other dairy products;

(3) CONDEMNATION FOR FOOD. To condemn for food purposes by denaturing with harmless coloring all unclean or unwholesome dairy products wherever they may find those products;

(4) SAMPLES. To take samples anywhere of any dairy products or imitation thereof and cause the samples to be analyzed or satisfactorily tested according to the method of the Association of Official Agricultural Chemists in force at the time. The analyses or tests shall be preserved and recorded;

(5) RIGHT OF ENTRY. To enter during business hours all dairy products plants or other places where dairy products are manufactured, produced, frozen, processed, stored, sold, or kept for sale or transportation in order to perform their official duties;

(6)(A) PRICE OF CREAM OR BUTTERFAT. To require that no person, firm, corporation, or association shall buy or offer to buy cream or butterfat for butter-making purposes without displaying the price to be paid for cream or butterfat according to grade of cream.

(B) The price shall be posted and displayed continuously during the business hours of the person, firm, or corporation buying cream, and the price, according to grade of cream, shall include all premiums and bonuses, if any, in letters and figures not less than two inches (2") in height in such manner or place so that the price posted shall be plainly visible from the street in front of the building or place in which the purchase is made.

(C) It shall be deemed a violation hereof if there is:

(i) A failure on the part of the person, firm, corporation, or association, its agent, servant, or employee, to post the prices; or

(ii) A buying of cream or butterfat at a price different from that which is posted.

(D) All persons, firms, corporations, or associations, their agents, servants, or employees shall keep a record in their respective cream stations of the time and date on or at which changes in prices are made and posted.

(E) However, nothing in this subdivision shall be construed as to forbid or prevent:

(i) Incorporated cooperative associations from paying annually earned patronage dividends according to the statutes and decrees under which they are organized; or

(ii) Corporations paying annual dividends according to the statutes and decrees under which they are incorporated;

(7)(A) SUBPOENAS. To issue subpoenas requiring the appearance of witnesses and the production of books, papers, reports, and records before the board or the director, in all cases where sufficient evidence of violation of this subchapter is filed with the director. The director shall have power to administer oaths with like effect as is done in courts of law in this state.

(B) It shall be the duty of any circuit court or the judge thereof upon application to issue an attachment for the witnesses and compel their attendance before the board or the director, to give testimony upon such matters as shall be lawfully required by the official. The court or judge shall have power, in cases of refusal, to punish for contempt, as in other cases of refusal to obey the orders and process of the court;

(8)(A) TESTS. To test milk, cream, and other dairy products for the purpose of ascertaining the percentages of butterfat or other ingredients contained therein.

(B) If the director or any of his deputies shall find upon testing that there is a variance of more than one percent (1%) of butterfat in a cream test or two-tenths of one percent ($\frac{2}{10}$ of 1%) in a milk test between his or her test and that made by any person engaged in buying or selling milk, cream, or other dairy products for the basis of payment, the director or deputy shall cause his or her test to be verified and substantiated by a recognized laboratory. If the chemist shall find that the test made by the director or deputy is correct, the test thus made and verified shall be admitted in evidence in all prosecutions for violation of this section. The director is authorized to recall and cancel the testor's permit of the person thus making false tests or to bring criminal action against the person, or both;

(9)(A) CARRIER REGULATIONS. To forbid and prevent any common carrier to neglect or fail to remove or ship from its depot, within twenty-four (24) hours of its arrival there for shipment, any milk, cream, or other dairy products left at that depot for transportation.

(B) Railway and express companies and other common carriers shall provide and utilize sanitary ventilated rooms or canvas covers at depots or transfer points for the protection from extreme temper-

atures, of all milk, cream, and ice cream received for shipment, and not allow merchandise of a contaminating nature to be stored on or with the cream.

(C) Truck route operators shall protect milk and cream from extreme temperatures and unsanitary conditions during transportation by proper covering and separation to prevent contamination from other transportation products;

(10) CANS OR PACKERS AT DEPOT. To forbid and prevent milk or cream cans or ice cream packers to remain at a railroad or truck depot longer than forty-eight (48) hours from the date of their arrival, excepting individual farm shipments;

(11)(A) BRANDED CONTAINERS. To forbid and prevent the use of any branded or registered cream can or milk can, ice cream, or frozen dessert packer or container for any other purpose than the handling, storing, or shipping of milk, cream, or frozen dessert.

(B) It shall be unlawful for any person or carrier other than the rightful owner, except with written consent of the owner thereof, to use, transport, or deliver any milk or cream can, whether filled with cream or milk or empty, or frozen dessert container, whether filled with frozen dessert or empty, to other than the rightful owner if the receptacle is marked with the brand or trademark of the owner, the brand or trademark being registered according to law with the Secretary of State;

(12)(A) ALTERATION OF BRAND — RETURN OF CONTAINERS. To forbid and prevent any person other than the rightful owner thereof to in any way alter the mark or brand or ownership identification on any milk or cream can or other dairy receptacle without written consent of the owner.

(B) Every person, firm, or corporation purchasing frozen desserts in cans and shipping bags which are to be returned to the manufacturer shall cause the cans to be washed and cleaned as soon as emptied, and the bags stored in a dry place, or returned at once;

(13) SAMPLES OF FROZEN DESSERTS. To take samples of frozen desserts, ice cream, or other frozen dairy products for official test at the factory where desserts are frozen or from an unopened container of frozen desserts or other frozen dairy products, according to a method approved by the American Association of Agricultural Chemists or the American Dairy Science Association;

(14) CONTAINERS USED FOR OTHER PURPOSES. To forbid and prevent the sale or storage of milk, cream, or other dairy products in milk or cream cans which have previously contained kerosene, gasoline, turpentine, oil, or products or by-products of a similar nature; and

(15)(A) DAIRY PRODUCT DEFINITIONS AND STANDARDS OF IDENTITY AND LABELING REQUIREMENTS. The board shall adopt the definitions and standards of identity for milk, milk products, cheeses, and frozen desserts found at 21 C.F.R., Parts 131, 133, and 135, and shall adopt any amendments or additions made thereunder. The board may adopt definitions and standards of identity of milk products, cheeses, and frozen

desserts if they are not found at 21 C.F.R. All packages enclosing milk, milk products, cheeses, and frozen desserts shall be labeled in accordance with the federal Food, Drug, and Cosmetic Act and the Fair Packaging and Labeling Act, and regulations promulgated thereunder.

(B) Provided, that the board shall not change, correct, adopt, or promulgate rules or regulations or other health code standards pertaining to the dairy industry of Arkansas, as defined in this section, until such changes have been reviewed by active Arkansas milk producers marketing agents, herein referred to as the "agents", and by the Arkansas Dairy Products Association, hereinafter referred to as the "association", in regular or especially called meetings of the agents and the association, or the governing bodies thereof. However, if meetings of the agents and the association are not held within thirty (30) days after a written notice by the board of intent to change, correct, adopt, or promulgate rules and regulations, the review of the agents and the association shall be deemed waived.

(C) Notice as required by this subsection shall be given in writing by ordinary mail, or be hand delivered, to the agents and to the director of the association.

(D) The Director of the Department of Health or the board may change, correct, adopt, or promulgate rules and regulations pertaining to the dairy industry of Arkansas in times of emergency or natural disaster without notice to the agents and the association.

(E) As used in this subchapter, the term "dairy industry of Arkansas" means Grade "A" milk plants, milk manufacturing plants, ice cream plants, milk producers, milk producer-distributors, milk haulers, milk distributors, dairy farms, receiving stations, and transfer stations.

(b) Nothing in this subchapter shall be construed to deprive any city of the first class or city of the second class of any of its police powers now or hereafter granted.

(c) Nothing in this section or in any other section of this subchapter shall be construed as authorizing or directing in any fashion the board to assume, to take over, or to discharge exclusively any of the functions and duties or responsibilities customarily performed by cities of the first class or cities of the second class, operating under and enforcing an ordinance approved by the Department of Health dealing with dairy or other sanitary milk inspection work or the bacteriological sampling of milk.

(d) The duties discharged under the terms of this subchapter shall be discharged insofar as is practicable and reasonable in cooperation with the municipal authorities wherever such authorities exist.

History. Acts 1941, No. 114, § 2; A.S.A. 1947, § 82-913; Acts 1989, No. 27, § 1.

U.S. Code. The Federal Food, Drug, and Cosmetic Act, referred to in this sec-

tion, is codified as 21 U.S.C. § 301 et seq.

The Fair Packaging and Labeling Act, referred to in this section, is codified as 15 U.S.C. § 1451 et seq.

Cross References. Jurisdiction of circuit courts, Ark. Const. Amend. 80, §§ 6, 19.

RESEARCH REFERENCES

Ark. L. Rev. Administrative Law in Arkansas, 4 Ark. L. Rev. 107.

CASE NOTES

Municipal Regulation.

The provision of subdivision (a)(15) permitting cities to make regulations does not deprive the State Board of Health of authority in cities which have regulations,

such provision authorizing the city to supplement but not supplant the efforts of the State Board of Health to protect the public health. State ex rel. Hale v. Lawson, 212 Ark. 233, 205 S.W.2d 204 (1947).

20-59-206. Dairy plant license.

(a) A dairy products plant manufacturing, processing, or packaging any dairy products other than those listed in § 20-59-207 as frozen desserts shall be required to have a dairy plant license.

(b) Every person buying or receiving milk, cream, or dairy products for manufacturing, processing, or packaging shall be required to procure from the Director of the Department of Health an annual dairy plant license for each location where milk, cream, or dairy products are received for the purpose of manufacturing, processing, or packaging.

(c) License fees for plant licenses shall be as follows:

(1) For a plant purchasing fluid milk, the fee shall be based on the pounds of fluid milk received the previous year:

Up to and including 5,000,000 lbs. milk	\$ 100.00
5,000,001 — 15,000,000 lbs.	200.00
15,000,001 — 25,000,000 lbs.	400.00
25,000,001 — 40,000,000 lbs.	600.00
40,000,001 — 60,000,000 lbs.	800.00
60,000,001 lbs. and up	1,000.00

(2) For a plant receiving cream, the fee shall be based on pounds of butterfat received the previous fiscal year:

Up to and including 200,000 lbs. butterfat	\$ 100.00
200,001 — 400,000 lbs.	200.00
400,001 — 600,000 lbs.	400.00
600,001 — 1,000,000 lbs.	600.00
1,000,001 lbs. and up	800.00

History. Acts 1941, No. 114, § 4; 1973, No. 98, § 2; A.S.A. 1947, § 82-915; Acts 1987, No. 534, § 1; 1991, No. 328, § 1.

20-59-207. Frozen dessert manufacturer's license.

(a) For purposes of licensing, a dairy plant manufacturing or packaging frozen dessert such as ice cream, ice cream mix, ice milk, ice milk mix, frozen malted milk, frozen custard, ice or ice sherbets, and novelties shall be licensed as a frozen dessert manufacturer.

(b) Any person making frozen dessert for sale shall be required to procure from the Director of the Department of Health an annual frozen dessert manufacturer's license for each location or plant where frozen dessert is manufactured.

(c) License fees for frozen dessert manufacturers' licenses shall be based on the gallons of mix or the finished products manufactured or sold the previous year. License fees shall be based on previous year's production:

Up to and including 10,000 gallons	\$ 60.00
10,001 — 20,000 gallons	100.00
20,001 — 100,000 gallons	200.00
100,001 — 350,000 gallons	400.00
350,001 — 500,000 gallons	600.00
500,001 — 750,000 gallons	800.00
750,001 — 1,000,000 gallons	1,000.00
1,000,001 gallons and up	1,200.00

History. Acts 1941, No. 114, § 4; 1973, No. 98, 2: A.S.A. 1947, § 82-915; Acts 1987, No. 534, § 1; 1991, No. 328, § 2.

20-59-208. Receiving or transfer plant license.

(a) Any plant where fluid milk or cream not in consumer packages is received on consignment or otherwise, stored, or transported but where packaging, processing, or manufacturing does not occur shall be required to have an annual receiving or transfer plant license for each location or plant where milk or cream is received.

(b) License fees for receiving or transfer plant licenses shall be as follows:

(1) The license fee for a receiving or transfer plant receiving fluid milk shall be one-half (½) the fee based on the schedule under § 20-59-206(c)(1).

(2) The license fee for a receiving or transfer plant receiving cream shall be one-half (½) the fee based on the schedule under § 20-59-206(c)(2);

(3) If a receiving or transfer plant receives both fluid milk and cream, the license fee shall be one-half (½) the fee based on a combination of schedules under § 20-59-206(c).

History. Acts 1941, No. 114, § 4; 1973, No. 98, § 2; A.S.A. 1947, § 82-915; Acts 1987, No. 534, § 1.

20-59-209. Mellorine manufacturer's license.

(a) For a mellorine plant making, processing, manufacturing, freezing, or packaging mellorine or mellorine mix, the method for determining the license fee for a mellorine manufacturer's license shall be based on the gallons of mix or the finished products manufactured or sold the previous year.

(b) License fees shall be based on the previous year's production:

Up to and including 10,000 gallons	\$ 60.00
10,001 — 20,000 gallons	100.00
20,001 — 100,000 gallons	200.00
100,001 — 350,000 gallons	400.00
350,001 — 500,000 gallons	600.00
500,001 — 750,000 gallons	800.00
750,001 — 1,000,000 gallons	1,000.00
1,000,001 gallons and up	1,200.00

History. Acts 1941, No. 114, § 4; 1973, No. 98, § 2; A.S.A. 1947, § 82-915; Acts 1987, No. 534, § 1; 1991, No. 328, § 3.

20-59-210. Sampler and grader license.

(a) Every person receiving or buying milk or cream on the basis of its chemical or physical constituents shall be, or have in his or her employ, in or on each milk transport tank truck, a licensed milk sampler and grader.

(b) Applications to become a licensed sampler and grader shall be made to the Director of the Department of Health upon such forms as he or she may prescribe.

(c) An annual license fee of ten dollars (\$10.00) shall be required of each person who qualifies for a license.

(d) The license shall expire on April 1 of each succeeding year.

(e) In order to qualify for a license, the applicant shall satisfy the director, either by a written examination or otherwise, that he or she is honest and competent to do sampling work.

(f) An identification card stating his or her name and address and bearing the same number as his or her license shall be issued to him or her at the time his or her license is issued and shall be carried on his or her person at all times while on duty.

History. Acts 1941, No. 114, § 4; 1973, No. 98, § 2; A.S.A. 1947, § 82-915; Acts 1987, No. 534, § 1.

20-59-211. Milk tester license and fee.

(a) Every person receiving or buying milk or cream on the basis of its chemical or physical constituents shall be, or have in his or her employ, a licensed milk tester to make the official analysis, and no other person

shall be allowed to make the tests in any creamery, cheese factory, milk depot, milk plant, ice cream factory, milk condensery, or similar plant where milk or cream is bought or received on a basis of its chemical or physical constituents.

(b) Application to become a licensed milk tester shall be made to the Director of the Department of Health upon such forms as he or she may prescribe.

(c) All licenses shall expire on the next succeeding April 1, and the fee shall be ten dollars (\$10.00). The required fee shall accompany the application.

(d) If the applicant shall be found upon examination to be qualified and competent, the director shall issue to him or her a license.

(e) Licensed testers are also qualified and permitted to act as samplers.

History. Acts 1941, No. 114, § 4; 1973, No. 98, § 2; A.S.A. 1947, § 82-915; Acts 1987, No. 534, § 1.

20-59-212. Plant permits — Cancellation, withdrawal, and suspension.

(a) Permits to operate milk, ice cream, and dairy product plants, as defined in §§ 20-59-206 — 20-59-211, shall be issued for one (1) year and shall be cancelled, withdrawn, or suspended by the State Board of Health for failure to comply with any of the provisions of this subchapter after due notice in writing has been given and the licensee has been granted a hearing.

(b) Any licensee whose permit shall have been cancelled, withdrawn, or suspended as provided in subsection (a) of this section shall have the right of appeal from the action of the board to the circuit court of the county of his residence.

History. Acts 1973, No. 98, § 1; A.S.A. 1947, § 82-915.1.

20-59-213. Dairy products from another state.

(a) It is required that all dairy products as defined by § 20-59-201(2) shipped into this state from another state shall meet the sanitary standards, definitions, and requirements of the Arkansas law and the rules and regulations promulgated by the State Board of Health.

(b) The board is authorized to establish acceptable reciprocal inspection authorities, interstate and intrastate, to properly enforce and administer this section in accordance with specifications and regulations adopted.

(c) A reasonable fee, to be determined by the board, shall be charged for all out-of-state inspections where reciprocal inspections are not available and cannot be negotiated.

History. Acts 1973, No. 70, § 1; A.S.A. 1947, § 82-912.1.

20-59-214. Unlawful acts — Insanitary plants.

It shall be unlawful to handle, process, freeze, or manufacture milk and dairy products except in sanitary dairy products plants and under sanitary conditions. Any dairy product plant in which dairy products of any kind are manufactured or any store or salesroom, excepting a store or salesroom where milk or milk products are sold at retail in final packaged form, depot, or other place where milk or any product of milk is handled or kept for sale shall be sanitary. Dairy products plants shall be considered insanitary:

(1) When milk, cream, or any product of either is received, purchased, or sold that does not meet the sanitary requirements set forth in this subchapter;

(2) When the utensils or apparatus that come in contact with milk or its products are not surfaced with glass, stoneware, glazed metal, tin, or other noncorrodible material and are not taken apart and thoroughly washed and sterilized by means of boiling water or super-heated steam or other means equally effective as proved by the American Association of Agricultural Chemists or the American Dairy Science Association. This must be done immediately following the completion of any processing operation or immediately following continued processing operations, and the utensils or apparatus must be suitably stored while not in use in such manner as to prevent contamination and sterilized upon reassembling just before the next day's operations. A plant shall also be considered insanitary if the cans or containers in which the milk, cream, or products of either are received, transported, or delivered are not thoroughly washed after emptying and before being sent out to be used again, or if any containers, utensils, apparatus, or equipment is used for any purpose other than that of handling milk and the products of milk. The transportation of dairy products not intended for human consumption in cans or containers used in the delivery of other milk products is expressly prohibited;

(3) When the floor is not constructed of or covered with nonabsorbent material or if the floor is so constructed as to permit the flowing of water, milk, or other liquids underneath or among the interstices of the floor, where fermentation and decay can take place or if the floor cannot be readily kept free from dirt and properly drained;

(4) When floor drains are not provided that will convey refuse milk, water, and sewage away to a point at least fifty (50) yards distant from the creamery or factory of dairy products or if any cesspool, privy vault, hog yard, slaughterhouse, manure, or any decaying vegetable or animal matter shall be so located as to permit foul odors to reach the creamery or other factory of dairy products or storeroom or depot where milk or its products are sold or handled or if the creamery or factory of dairy products is not adequately and conveniently supplied with water free of pollution with sewage or contamination with pathogenic bacteria

unless the water is subjected to efficient chlorination or otherwise treated to make it safe for use in connection with the manufacture of food products. This subdivision shall not apply to cream stations as regards floor drains. However, it shall apply to cream stations in every other particular;

(5) When the creamery or factory of dairy products does not permit access of light and air sufficient to secure good ventilation;

(6) When any dairy products plant is not separated by solid partitions from living quarters or toilet facilities, except that a self-closing door may be used between living quarters and the dairy products plant and a vestibule may be used to connect toilet facilities;

(7) When all openings to the outer air are not provided with screens or other effective means so as to exclude flies and insects;

(8) When upon the floor or walls any milk or its products or any filth is allowed to accumulate or ferment, decay, or if the bodies or wearing apparel of persons employed, or coming in contact with any dairy products in a dairy products plant are unclean and not washed from time to time with reasonable frequency, and persons have a communicable disease, or if suitable toilet and lavatory facilities and clean towels are not provided for employees;

(9) When tight, sound, and cleanable walls and ceilings are not provided; or

(10) When supplies such as parchment paper, cartons, paper cans and bottles, fruits, nuts, egg products, flavoring, coloring, sugar, stabilizers, salt, and other materials and supplies used in the manufacture and packaging of dairy products are not stored, kept, and handled in such a way as to be free from contamination.

History. Acts 1941, No. 114, § 3;
A.S.A. 1947, § 82-914.

20-59-215. Unlawful acts — False tests.

It shall be unlawful, in determining the value of milk, cream, or other dairy products by the use of the Babcock test, to give any false reading or in any way manipulate the test so as to give a higher or lower percent of butterfat than the milk, cream, or other dairy products actually contain, or to cause any inaccuracy in reading the percent of butterfat by securing from any quantity of milk, cream, or other dairy products to be tested an inaccurate sample for the test. The result of a test reported to the producer for the basis of the payment must be the same as the laboratory record of the test, all records to be in indelible pencil or ink and filed for a period of at least sixty (60) days. All samples of milk or cream, tests of which are to be used as a basis of payment, shall be kept in a cool place in tightly stoppered or tightly covered jars for at least twenty-four (24) hours after the test of the samples has been completed. Where Sundays and holidays intervene, samples shall be held for forty-eight (48) hours after completing the tests. Samples of whole milk shall be treated with proper preservatives to ensure accuracy of the

test. Samples of milk for testing shall not be gathered over a period of more than sixteen (16) days, and the samples of milk shall be tested immediately after the period of gathering the samples.

History. Acts 1941, No. 114, § 3;
A.S.A. 1947, § 82-914.

20-59-216. Unlawful acts — Improper method of testing.

It shall be unlawful to use other than the Babcock method or such method of testing as may be approved by the American Association of Agricultural Chemists or the American Dairy Science Association when testing milk or cream, the test of which is to be used as a basis for making payment for the milk or cream thus tested.

History. Acts 1941, No. 114, § 3;
A.S.A. 1947, § 82-914.

20-59-217. Unlawful acts — Improper scales.

It shall be unlawful to use other than torsion balance scales or such scales as may be approved by the American Association of Agricultural Chemists or the American Dairy Science Association when weighing cream for testing, when the tests are to be used as a basis for making payment for the cream.

History. Acts 1941, No. 114, § 3;
A.S.A. 1947, § 82-914.

20-59-218. Unlawful acts — Improper centrifuges.

It shall be improper to use other than standard types of centrifuges approved by the American Association of Agricultural Chemists or the American Dairy Science Association.

History. Acts 1941, No. 114, § 3;
A.S.A. 1947, § 82-914.

20-59-219. Unlawful acts — Improper testing apparatus.

It shall be unlawful to use other than specifications for apparatus and chemicals and directions for testing milk and cream which conform to those adopted by the American Association of Agricultural Chemists or the American Dairy Science Association with such additions as are deemed advisable to make them applicable to the provisions of this subchapter. All types of test tubes, bottles, pipettes, instruments, or specified weights used in connection with testing or determining the value of milk, cream, or other dairy products by the use of the Babcock test shall be approved by the American Association of Agricultural Chemists or the American Dairy Science Association. Cream test weights shall be certified by the manufacturer as to accuracy and stamped on both top and bottom.

History. Acts 1941, No. 114, § 3;
A.S.A. 1947, § 82-914.

20-59-220. Unlawful acts — Unclean instruments.

It shall be unlawful for any person to use any test tube, bottle, pipette, or instrument in connection with the test which is not perfectly clean.

History. Acts 1941, No. 114, § 3;
A.S.A. 1947, § 82-914.

20-59-221. Unlawful acts — Improper temperature for tests.

It shall be unlawful to maintain milk and cream tests at temperatures other than one hundred thirty degrees Fahrenheit (130° F) — one hundred forty degrees Fahrenheit (140° F), for at least five (5) minutes before the reading of the percent of butterfat is made and recorded. In maintaining this temperature, water shall be used, the water to extend above the butterfat column in the bottle neck.

History. Acts 1941, No. 114, § 3;
A.S.A. 1947, § 82-914.

20-59-222. Unlawful acts — Improper reading of butterfat control.

It shall be unlawful to read the percent of butterfat in cream tests, without the correct use of glymol or similar oils.

History. Acts 1941, No. 114, § 3;
A.S.A. 1947, § 82-914.

20-59-223. Unlawful acts — Handling in insanitary places.

It shall be unlawful to handle milk, cream, butter, frozen desserts, or other dairy products in unclean or insanitary places, or in any insanitary manner, or to keep, store, or prepare for market any cream, milk, or other dairy products in the same enclosure with any hide or fur house, or any cow, horse, or hog barns or sheds, or other places where livestock or poultry are kept, housed, or handled, or in rooms or buildings used as gasoline or oil filling stations, except as the sealed final product. Cream or milk receiving and buying stations located in connection with produce houses where poultry or fur and hides, rabbits, etc. are purchased or in connection with restaurants or living quarters shall be separated by a solid wall such as plaster, brick, or tongue and groove or other tight lumber. Self-closing solid connecting doors may be used between cream rooms and other rooms provided that cream rooms are adequately ventilated. Inside walls and ceilings of cream stations shall be painted annually with light-colored waterproof paint. Where water systems are available, running water shall be provided for

cleaning purposes. Cream rooms must be used exclusively for the handling of dairy products.

History. Acts 1941, No. 114, § 3;
A.S.A. 1947, § 82-914.

20-59-224. Unlawful acts — Products of diseased animals — Contaminated products.

It shall be unlawful in all cases to sell or offer for sale milk or cream from diseased or unhealthy animals, as certified to be unhealthy or diseased by the State Veterinarian; milk, cream, or any of their derivatives handled by any person suffering from or coming in contact with persons afflicted with any contagious disease; to sell or offer for sale any milk, cream, or any of their derivatives which have been exposed to contamination or into which may have fallen any insanitary articles or any foreign substance which would render the milk, cream, or the product manufactured therefrom, unfit for human consumption.

History. Acts 1941, No. 114, § 3;
A.S.A. 1947, § 82-914.

20-59-225. Unlawful acts — Preservatives.

It shall be unlawful to sell or offer or expose for sale anywhere in this state, milk, cream, or other dairy products containing any preservatives of any kind whatsoever except common salt or sugar for flavoring purposes only or that shall not comply with the standards provided in this subchapter.

History. Acts 1941, No. 114, § 3;
A.S.A. 1947, § 82-914.

20-59-226. Unlawful acts — Removing label of health officer.

It shall be unlawful to remove or deface any tags or labels which have been attached by the Director of the Department of Health or his deputies to a receptacle containing cream, milk, or other dairy products.

History. Acts 1941, No. 114, § 3;
A.S.A. 1947, § 82-914.

20-59-227. Unlawful acts — Unpasteurized products.

It shall be unlawful to make and offer for sale butter or frozen desserts unless all dairy products used in their manufacture are pasteurized except in the case of butter made by a dairy farmer who produces a majority of the milk or cream he or she uses.

History. Acts 1941, No. 114, § 3; A.S.A.
1947, § 82-914.

20-59-228. Unlawful acts — Products below standard.

It shall be unlawful to sell, keep for sale, expose, or offer for sale any milk products or other dairy products which shall not conform at least to the minimum standards provided in this subchapter.

History. Acts 1941, No. 114, § 3; A.S.A. 1947, § 82-914.

20-59-229. Unlawful acts — Cream graded for buttermaking — Price differential.

It shall be unlawful to purchase or receive cream for buttermaking purposes except on the basis of the following grades: Sweet cream, first grade and second grade. Every person shall buy or receive cream on a grade basis, and each grade shall be kept and shipped so as to arrive within forty-eight (48) hours after the date of purchase at a dairy products manufacturing plant. The cream shall be shipped in a separate can plainly marked to indicate the grade therein and the date graded, and the person buying or receiving the cream shall maintain a price differential between grades on a recognized established differential. This differential shall be a minimum of two cents (2¢) per pound of butterfat between first grade cream and second grade cream.

History. Acts 1941, No. 114, § 3; A.S.A. 1947, § 82-914.

20-59-230. Unlawful acts — Mold or sediment test.

It shall be unlawful to purchase raw cream or milk without applying a mold or sediment test, monthly or more often if necessary, to each patron's cream or milk, whether purchased by truck route, cream station, direct shipment, or delivered directly to a dairy products plant.

History. Acts 1941, No. 114, § 3; A.S.A. 1947, § 82-914.

20-59-231. Unlawful acts — Empty cans inverted.

It shall be unlawful to fail to invert empty cream and milk cans on racks located inside of cream stations.

History. Acts 1941, No. 114, § 3; A.S.A. 1947, § 82-914.

20-59-232. Unlawful acts — Records of cream buyers — Monthly reports.

It shall be unlawful for all cream buyers to purchase cream without keeping a careful record of all cream bought as first grade and second grade, and they shall render the report regularly to the creamery or factory receiving the cream. Creameries shall report the above infor-

mation monthly, together with other cream purchase reports to the Director of the Department of Health on forms furnished them.

History. Acts 1941, No. 114, § 3;
A.S.A. 1947, § 82-914.

20-59-233. Unlawful acts — Place of testing or grading — Delivery to carrier in unwholesome condition.

It shall be unlawful for all persons collecting milk or cream on routes to do any sampling, testing, or grading en route. All sampling, testing, and grading must be done in a licensed milk or cream station or a dairy manufacturing plant. No pouring from one can to another shall be done except in a licensed milk or cream station or a dairy manufacturing plant. Only containers specifically manufactured for the handling of milk or cream shall be used. No milk or cream to be used in the manufacture of food products shall be delivered in an unwholesome condition to a carrier.

History. Acts 1941, No. 114, § 3;
A.S.A. 1947, § 82-914.

20-59-234. Unlawful acts — Operation without permit.

It shall be unlawful for any person, firm, or corporation to operate a dairy products plant, including milk and cream stations, or freeze or manufacture frozen desserts, or operate a condensery depot within the State of Arkansas without having first secured a permit, except as provided for in § 20-59-244, signed by the Director of the Department of Health and bearing the seal of his or her office. The permit shall be displayed conspicuously at the place of business.

History. Acts 1941, No. 114, § 3;
A.S.A. 1947, § 82-914.

20-59-235. Unlawful acts — Labeling of cheese.

It shall be unlawful for any person, firm, or corporation to sell, exhibit, or offer for sale skim milk cheese as defined in § 20-59-201(3)(C) without the following labeling:

(1) Skim milk cheese or part-skim milk cheese shall be stamped with dark colored purple vegetable ink using a rubber stamp three inches (3") to four inches (4") wide and ten inches (10") long which shall contain the wording "SKIM MILK" eight (8) times, one under the other in letters three-eighths inch ($\frac{3}{8}$ ") to one-half inch ($\frac{1}{2}$ ") high;

(2) Square cheese prints shall be stamped on the entire face;

(3) Longhorn cheese shall be stamped on the long edge running from top to bottom; and

(4) On cheese commercially known as "Daisies", the stamp shall repeat itself entirely around the circumference of the cheese.

History. Acts 1941, No. 114, § 3;
A.S.A. 1947, § 82-914.

20-59-236. Unlawful acts — Removal of label.

It shall be unlawful for any person, firm, or corporation to remove or deface the required labeling on skim milk cheese except as is unavoidable in its final sale.

History. Acts 1941, No. 114, § 3;
A.S.A. 1947, § 82-914.

20-59-237. Unlawful acts — Renovation of butter or cheese.

It shall be unlawful to renovate butter or cheese without pasteurizing all such products at the time of renovation.

History. Acts 1941, No. 114, § 3;
A.S.A. 1947, § 82-914.

20-59-238. Unlawful acts — Labeling of renovated butter.

It shall be unlawful to sell, offer for sale, or store renovated or process butter without labeling the product with the words "RENOVATED BUTTER" on the outside of the carton, wrap, or container in which it is placed for final sale in letters at least as large as any other printing on the carton, wrap, or container.

History. Acts 1941, No. 114, § 3;
A.S.A. 1947, § 82-914.

20-59-239. Unlawful acts — Labeling ice cream.

It shall be unlawful to sell ice cream or ice milk in factory-filled package form unless it is labeled with the printed name of the manufacturer, the wholesale distributor, or the retailer. No person shall sell or offer or expose for sale ice milk unless contained in a package or enclosed in a wrapper upon which package or wrapper shall be conspicuously printed the words "ICE MILK".

History. Acts 1941, No. 114, § 3;
A.S.A. 1947, § 82-914.

20-59-240. Unlawful acts — Labeling ice milk.

(a) It shall be unlawful to sell ice milk unless all containers are conspicuously so labeled.

(b) Places where ice milk is sold at retail shall display a conspicuous legible sign containing the words "ICE MILK SOLD HERE" in plain block letters not less than six inches (6") high.

History. Acts 1941, No. 114, § 3;
A.S.A. 1947, § 82-914.

20-59-241. Unlawful acts — Labeling ice cream mix.

It shall be unlawful to sell or transport ice cream mix to another location for manufacture or freezing except in sealed containers that cannot be opened without breaking the seal, and the label shall be securely attached to the container and shall show the name of the manufacturer and the percentage of milk fat of the ice cream mix contained therein.

History. Acts 1941, No. 114, § 3;
A.S.A. 1947, § 82-914.

20-59-242. Unlawful acts — Bacteria count of frozen dessert.

It shall be unlawful for any dairy products plant to produce, manufacture, freeze, process, sell, expose, or offer for sale any frozen dessert having a bacteria count on three (3) consecutive tests of more than one hundred thousand (100,000) bacteria per gram.

History. Acts 1941, No. 114, § 3;
A.S.A. 1947, § 82-914.

20-59-243. Unlawful acts — Graded milk.

It shall be unlawful to label, sell, or offer for sale any milk as graded milk unless the grade is officially awarded by the director having jurisdiction in accordance with the provisions of the United States Public Health Service Standard Milk Ordinance and Code.

History. Acts 1941, No. 114, § 3;
A.S.A. 1947, § 82-914.

20-59-244. Unlawful acts — Pasteurized milk — Permit.

It shall be unlawful to label, sell, or offer for sale as pasteurized any milk unless it has been pasteurized in accordance with the provisions of the United States Public Health Service Standard Milk Ordinance and Code under a permit issued by the Director of the Department of Health. However, no permit shall be required where plants are operating under permit from a municipality enforcing the United States Public Health Service Standard Milk Ordinance and Code.

History. Acts 1941, No. 114, § 3;
A.S.A. 1947, § 82-914.

20-59-245. Unlawful acts — Name of distributor on container — Sale of misprint bottle caps.

It shall be unlawful to sell or offer for sale any milk or milk product in bottles or other original containers for final consumption unless the bottle or container has a cap or cover with the name of the dairy products plant distributor printed thereon. The use or sale of misprinted milk bottle caps is declared unlawful.

History. Acts 1941, No. 114, § 3;
A.S.A. 1947, § 82-914.

20-59-246. Manufacturing milk permit.

(a) Every dairy which produces milk or cream to be used for manufacturing purposes shall be required to procure from the Director of the Department of Health a manufacturing milk permit.

(b) Any dairy may obtain a manufacturing milk permit by paying an annual permit fee of twenty-five dollars (\$25.00) to the Department of Health and by meeting the minimum requirements of the Rules and Regulations Pertaining to Milk for Manufacturing Purposes.

(c) Permit fees shall be due by June 30 of each year. Grade "A" dairies with suspended permits and selling milk for manufacturing purposes will be given a ninety-day exemption from the requirement of obtaining a manufacturing milk permit if they meet the requirements of a manufactured milk producer.

History. Acts 1941, No. 114, § 4; A.S.A. 1947 § 82-915; Acts 1987, No. 534, § 1.

20-59-247. Disposition of funds.

(a) All fees and fines collected under this subchapter are special revenues and shall be deposited in the State Treasury to the credit of the Public Health Fund to be used exclusively by the Division of Sanitarian Services.

(b) Subject to such rules and regulations as may be implemented by the Chief Fiscal Officer of the State, the disbursing officer for the Department of Health is authorized to transfer all unexpended funds relative to manufactured milk that pertain to fees collected, as certified by the Chief Fiscal Officer of the State, to be carried forward and made available for expenditures for the same purpose for any following fiscal year.

History. Acts 1941, No. 114, § [9], as added by 1987, No. 534, § 2; 1991, No. 328, § 4.

20-59-248. Incidental sales of goat milk not prohibited.

(a) For purposes of this section, "incidental sales of goat milk" are those sales where the average monthly number of gallons sold does not exceed one hundred (100) gallons.

(b) The provisions of this subchapter shall not be construed to prohibit incidental sales of raw goat milk directly to consumers at the farm where the milk is produced or to preclude the advertising of incidental sales of goat milk.

History. Acts 1993, No. 816, § 1.

SUBCHAPTER 3 — MELLORINE

SECTION.

20-59-301. Applicability.

20-59-302. Penalties.

20-59-303. State Board of Health — Enforcement.

20-59-304. Production requirements generally.

SECTION.

20-59-305. Production permit required.

20-59-306. Original containers and labeling required.

20-59-307. Imitation mellorine.

20-59-308. False or misleading advertising prohibited.

Effective Dates. Acts 1953, No. 416,
§ 15: effective 60 days after becoming law.

20-59-301. Applicability.

Every person, firm, or corporation producing, manufacturing, processing, freezing, or packaging mellorine or mellorine mix shall comply with the same rules and regulations that govern the production and manufacturing of ice cream and other manufactured milk products, as promulgated by the State Board of Health.

History. Acts 1953, No. 416, § 10;
A.S.A. 1947, § 82-918.9.

20-59-302. Penalties.

Any person, firm, or corporation that violates any of the provisions of this subchapter or any of the rules and regulations issued in connection therewith, or any officer, agent, or employee thereof, who directs or knowingly permits such violation or who aids or assists such violation, shall be guilty of a misdemeanor and upon conviction shall be subject to a fine of not more than two hundred fifty dollars (\$250) and not less than fifty dollars (\$50.00), and each violation shall constitute a separate offense.

History. Acts 1953, No. 416, § 13;
A.S.A. 1947, § 82-918.12.

20-59-303. State Board of Health — Enforcement.

(a) The State Board of Health, through its constituted officers and agents, is authorized and directed to administer and to supervise the enforcement of this subchapter, to prescribe rules and regulations to carry out its purpose, to provide for such periodic inspections and investigations as it may deem necessary to disclose violations, to receive and provide for the investigation of complaints and to provide for the institution and prosecution of civil or criminal actions or both.

(b) The provisions of this subchapter and the rules and regulations issued in connection therewith may be enforced by injunction in any court having jurisdiction to grant injunctive relief. Adulterated or

misbranded articles illegally held or otherwise involved in a violation of this subchapter or of the rules and regulations shall be subject to seizure and disposition in accordance with an order of court.

(c) However, any aggrieved party shall have the right to apply to the circuit court in the county of his or her residence for a review of any summary action on the part of the board or its agents. For this purpose, service of process upon the Director of the Department of Health at any place in this state shall constitute a valid service in the application for review.

History. Acts 1953, No. 416, § 11; cuit courts, Ark. Const. Amend. 80, §§ 6, A.S.A. 1947, § 82-918.10. 19.

Cross References. Jurisdiction of cir-

20-59-304. Production requirements generally.

(a) Any person, firm, or corporation who can and does comply with the rules and regulations as promulgated by the State Board of Health and upon the payment of the permit fee and the issuance of a permit shall be eligible to produce, manufacture, process, freeze, and package mellorine and mellorine mix.

(b) The plants must have available the necessary equipment to package the product in containers as set out in this subchapter. However, plants may manufacture mellorine mix without owning the necessary equipment to package the product, so long as they sell the mellorine mix to a processing plant which has been issued a permit and has the necessary equipment to package mellorine.

History. Acts 1953, No. 416, § 12;
A.S.A. 1947, § 82-918.11.

20-59-305. Production permit required.

(a) It shall be unlawful for any person, firm, or corporation to operate a plant producing, manufacturing, processing, freezing, or packaging mellorine or mellorine mix without having first secured a permit signed by the Director of the Department of Health and bearing the seal of his or her office. The permit shall be displayed conspicuously at the place of business.

(b) Permits shall be issued for one (1) year and shall be in effect from April 1 through March 31 of each year and shall be cancelled, withdrawn, or suspended by the State Board of Health for failure to comply with any of the provisions of this subchapter after due notice in writing has been given and the licensee has been granted a hearing.

(c) Any licensee whose permit has been cancelled, withdrawn, or suspended as provided in this section shall have the right of appeal from the action of the board to the circuit court of the county of his or her residence.

(d) The director shall collect for the permits, and all funds collected by the director under the provisions of this subchapter shall be deposited in the State Treasury.

History. Acts 1953, No. 416, §§ 7, 8; 1979, No. 521, § 2; A.S.A. 1947, §§ 82-918.6, 82-918.7.

20-59-306. Original containers and labeling required.

(a) Mellorine shall be sold in or served from original sealed, factory-filled containers.

(b) The container shall be labeled "MELLORINE", with the lettering of the word mellorine to be at least three-eighths inch ($\frac{3}{8}$ ") in size and in every case shall appear in as large type size and as prominent as any other wording on the container except the brand name.

(c) Use of the word "cream" or its phonetic equivalent, however spelled, in connection with the labeling, advertising, branding, or sale of mellorine is prohibited, as is the use of the name of any product defined under § 20-59-201(4)(A)-(I), except in the name identifying the manufacturer.

(d) The packaging, labeling, sale, offering for sale, serving, or dispensing of mellorine in violation of subsections (a)-(c) of this section is prohibited.

History. Acts 1953, No. 416, §§ 3, 6; 1977, No. 92, § 1; 1979, No. 521, § 2; A.S.A. 1947, §§ 82-918.2, 82-918.5.

20-59-307. Imitation mellorine.

(a) Any food product containing any food fat as defined in § 20-59-201(4)(J)(ii) which is made in semblance or in imitation of mellorine as defined and standardized in § 20-59-201 but which does not conform to the definition and standard shall be deemed to be adulterated and misbranded notwithstanding the employment of any fanciful name or the use of the word "imitation" to designate the product.

(b) The adulteration and misbranding of mellorine in violation of subsection (a) of this section is prohibited.

History. Acts 1953, No. 416, §§ 5, 6; A.S.A. 1947, §§ 82-918.4, 82-918.5.

20-59-308. False or misleading advertising prohibited.

(a) The false and misleading advertising of mellorine is prohibited.

(b) An advertisement of mellorine shall be deemed to be false and misleading if in the advertisement representations are made or suggested by statement, word, grade, designation, design, device, symbol, sound, or any combination thereof that mellorine is a dairy product.

(c) However, nothing contained in this section shall prevent a truthful, accurate, and full statement in any advertisement of all the ingredients in mellorine.

(d) The false and misleading advertising of mellorine in violation of subsections (a)-(c) of this section is prohibited.

History. Acts 1953, No. 416, §§ 4, 6;
A.S.A. 1947, §§ 82-918.3, 82-918.5.

SUBCHAPTER 4 — GRADE “A” MILK PROGRAM ACT

SECTION.
20-59-401. Title.
20-59-402. Definitions.
20-59-403. Division of Sanitarian Services — Regulatory powers and duties.
20-59-404. Inspection fees.

SECTION.
20-59-405. Disposition and transfer of inspection fees.
20-59-406. Motor vehicles.
20-59-407. Reports to Advisory Committee to the Arkansas Grade “A” Milk Program.

Effective Dates. Acts 1981, No. 587, § 13: Mar. 18, 1981. Emergency clause provided: “It is hereby found and determined by the General Assembly that the Arkansas Grade “A” Milk Inspection Program is essential to the public health, safety, and welfare of the people of this State, and that the immediate passage of this Act is necessary to establish reasonable fees to be set aside and used to defray the cost of said program within the Division of Sanitarian Services of the Department of Health. Therefore, an emergency is hereby declared to exist and this Act, being immediately necessary for the preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval.”

Acts 1987, No. 634, § 3: Apr. 4, 1987. Emergency clause provided: “It is hereby found and determined by the General Assembly that due to current economic conditions, budgetary constraints may limit the ability of the Department of Health to adequately provide needed services unless

some license fees are increased; that it is most equitable to make this increase effective immediately upon passage of this Act. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1991, No. 191, § 5: Feb. 19, 1991. Emergency clause provided: “It is hereby found and determined by the Seventy-Eighth General Assembly that this act should become effective at the beginning of the next fiscal year; that the beginning of the next fiscal year is July 1, 1991; that unless this emergency clause is adopted this act may not become effective until after that date. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

20-59-401. Title.

This subchapter may be cited as the “Arkansas Grade ‘A’ Milk Program Act of 1981”.

History. Acts 1981, No. 587, § 10;
A.S.A. 1947, § 82-4015.

20-59-402. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) “Distributors of Grade ‘A’ milk and milk products processed by plants outside of Arkansas” means any person who offers for sale or sells to another any Grade “A” milk or milk products in Arkansas;

(2) "Division of Sanitarian Services" means the Division of Sanitarian Services of the Department of Health;

(3) "Grade 'A' milk and milk products" means milk and milk products that are in compliance with the Grade "A" milk and milk products control laws and regulations of the State of Arkansas;

(4) "Imported raw milk" means any milk not produced under routine inspection of Arkansas and imported into the State of Arkansas;

(5) "Milk hauler" means any person who samples and transports Grade "A" raw milk and raw milk products to Grade "A" milk plants or receiving or transfer stations;

(6) "Milk inspection fee" means the Grade "A" milk and milk products inspection fee;

(7) "Milk Inspection Fees Fund" means the fund in the State Treasury into which the Grade "A" milk and milk products inspection fees are to be deposited;

(8) "Milk plant" means a milk plant in any place, premise, or establishment where Grade "A" milk and milk products are collected, handled, processed, stored, pasteurized, bottled, or prepared for distribution;

(9) "Producer" means any person who produces Grade "A" raw milk inspected by the State of Arkansas;

(10) "Producer-distributor" means a producer who also is a distributor; and

(11) "State" means the State of Arkansas.

History. Acts 1981, No. 587, § 1;
A.S.A. 1947, § 82-4006.

20-59-403. Division of Sanitarian Services — Regulatory powers and duties.

(a) The Division of Sanitarian Services shall assume all regulatory duties, powers, and responsibilities pertaining to production and distribution of Grade "A" milk and milk products in this state.

(b) The division shall provide Grade "A" milk permits, inspection, and laboratory services to all qualified Grade "A" milk plants, producers, producer-distributors, distributors, milk haulers, receiving stations, and transfer stations.

History. Acts 1981, No. 587, § 2;
A.S.A. 1947, § 82-4007.

20-59-404. Inspection fees.

(a) In order to make the Grade "A" milk and milk products inspection and regulation program self-supporting, the Accounting Division of the Department of Health shall collect on a monthly basis unless otherwise stated the following Grade "A" milk and milk products inspection fees:

(1) Producers shall pay 30¢ per one hundred pounds (100 lbs.) of Grade "A" milk inspected by the state.

(2) Importers of raw Grade "A" milk produced and inspected in another state and imported into Arkansas as raw Grade "A" milk shall pay an inspection fee of ten dollars (\$10.00) for each sample analyzed by the laboratory of the Department of Health.

(3) Milk plants shall pay 30¢ per one hundred pounds (100 lbs.) of Grade "A" milk processed or distributed.

(4) Producer-distributors shall pay 65¢ per one hundred pounds (100 lbs.) of Grade "A" milk produced or sold.

(5) Milk haulers who sample and transport Grade "A" milk in the state shall pay an annual permit fee of ten dollars (\$10.00). The fee shall be due January 1 of each year.

(6) Distributors of Grade "A" milk processed by plants outside of Arkansas and sold in the state shall pay 30¢ per one hundred pounds (100 lbs.) or a monthly minimum fee of two hundred dollars (\$200) per month plus ten dollars (\$10.00) for each sample analyzed by the laboratory of the department. The larger of the two (2) sums shall be paid during the following month.

(7) Single service plants shall pay an annual permit fee of two hundred dollars (\$200). This fee shall not be applied to plants paying a milk inspection fee. The fee shall be due January 1 of each year.

(b) If any person fails, neglects, or refuses to pay the above fee and is delinquent for a period of thirty (30) days, the Director of the Department of Health is directed and empowered to prohibit the person from distributing, hauling, selling, or otherwise handling Grade "A" milk or milk products in the state and shall suspend his or her permit and withdraw all inspection service from the establishment until fees are paid in full.

(c)(1) The Grade "A" milk and milk products inspection fees shall not be greater than the actual cost of the inspections.

(2) If there is a balance in the Milk Inspection Fees Fund equivalent to ninety-day maintenance of the Arkansas Grade "A" milk program, one (1) month of the milk inspection fees shall be forgiven.

(d) The fees set forth in subsection (a) of this section may be increased by up to one half cent (\$.005) beginning July 1, 1992, upon certification by the Chief Fiscal Officer of the State that the expenditures of the Grade "A" milk program exceed the amount of fees collected. Any request for an increase in fees shall be reviewed by the Advisory Committee to the Arkansas Grade "A" Milk Program.

History. Acts 1981, No. 587, §§ 3, 4;
A.S.A. 1947, §§ 82-4008, 82-4009; Acts
1987, No. 634, § 1; 1991, No. 191, § 1.

20-59-405. Disposition and transfer of inspection fees.

(a)(1) All moneys received by the Department of Health for milk inspection fees as established in this subchapter shall be deposited in the State Treasury, and the Treasurer of State shall, after deducting therefrom one and one-half percent (1½%) of the amount for credit to

the Constitutional Officers Fund to be used for the purposes provided by law, credit the net amount as special revenues to the credit of the Milk Inspection Fees Fund to be used by the Division of Sanitarian Services exclusively for the purpose of defraying the cost of maintenance, operation, and improvement of the permits, inspections, and laboratory services of the Grade "A" milk and milk products inspection program.

(2) The unexpended balance of the funds in the Milk Inspection Fees Fund at the end of each fiscal year shall not be considered as a part of the unexpended fund balances of the department that are recovered by the Treasurer of State at the close of each year, and any balance in the Milk Inspection Fees Fund shall be carried forward in the fund to the next fiscal year to be used for the support of the milk inspection program as provided by law.

(b) The Chief Fiscal Officer of the State is authorized from time to time to make transfers of moneys in the Budget Stabilization Trust Fund as loans to the Milk Inspection Fees Fund to be used for the maintenance and operation of the milk inspection program of the Division of Sanitarian Services, provided that any moneys loaned from the Budget Stabilization Trust Fund to the Milk Inspection Fees Fund shall be repaid from fees derived from the milk inspection program on or before the last day of the fiscal year in which the loan of the funds is made.

History. Acts 1981, No. 587, § 5;
A.S.A. 1947, § 82-4010.

20-59-406. Motor vehicles.

(a) Vehicles purchased with milk inspection fee funds or assigned to the Arkansas Grade "A" milk program shall be at the disposal of personnel of the Arkansas Grade "A" milk program, provided in case of emergency or natural disaster that the motor vehicles may be used at the discretion of the Director of the Division of Sanitarian Services.

(b) Motor vehicles purchased with moneys from the Milk Inspection Fees Fund shall not be loaned, transferred, or assigned to any other state agency on a permanent basis.

(c) Any moneys received from the sale or trade of motor vehicles purchased with funds from the fund shall be credited to the fund.

History. Acts 1981, No. 587, §§ 6-8;
A.S.A. 1947, §§ 82-4011 — 82-4013.

20-59-407. Reports to Advisory Committee to the Arkansas Grade "A" Milk Program.

The Department of Health shall provide the Advisory Committee to the Arkansas Grade "A" Milk Program on a quarterly basis a full and complete statement of all receipts and disbursements of the Milk Inspection Fees Fund.

History. Acts 1981, No. 587, § 9;
A.S.A. 1947, § 82-4014.

SUBCHAPTER 5 — GRADE “A” MILK PROGRAM ADVISORY COMMITTEE

SECTION.

20-59-501. Title.

20-59-502. Definitions.

20-59-503. Creation — Members.

20-59-504. Officers.

SECTION.

20-59-505. Meetings.

20-59-506. Review of proposed rules and regulations — Exceptions.

Effective Dates. Acts 1981, No. 506, § 21; Mar. 13, 1981. Emergency clause provided: “It is hereby found and determined by the General Assembly that the Arkansas Grade “A” milk program is a worthwhile program and is necessary for the inspection of Grade “A” milk producers, distributors, producer-distributors, milk plants, receiving stations, transfer stations and milk haulers. Therefore, an emergency is declared to exist and this Act being necessary for preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1983, No. 310, § 2; Mar. 2, 1983. Emergency clause provided: “It is hereby found and determined by the General Assembly that members of the Advisory Committee to the Arkansas Grade “A” Milk Program are not now authorized to receive per diem or expense allowances for attending regular and special meetings of the Committee, and that attendance at such meetings results in financial hardship to members of the Committee, who should be authorized to receive reimbursement for reasonable and necessary expenses and travel incurred in connection with attending meetings of the Committee, and that the immediate passage of this Act is necessary to correct said situa-

tion. Therefore, an emergency is hereby declared to exist, and this Act, being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval.”

Acts 1997, No. 250, § 258; Feb. 24, 1997. Emergency clause provided: “It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor [sic], it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

20-59-501. Title.

This subchapter may be cited as the “Advisory Committee to the Arkansas Grade ‘A’ Milk Program Act of 1981”.

History. Acts 1981, No. 506, § 1;
A.S.A. 1947, § 82-4016.

20-59-502. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Committee" means the Arkansas Grade "A" Milk Program Advisory Committee;

(2) "Governor" means the Governor of the State of Arkansas;

(3) "Grade 'A' milk and milk products" means milk and milk products that are in compliance with the Grade "A" milk control laws and regulations of the State of Arkansas;

(4) "Grade 'A' milk industry of the State of Arkansas" means Grade "A" milk producers, producer-distributors, milk haulers, milk distributors, dairy farms, milk plants, receiving stations, and transfer stations;

(5) "Grade 'A' milk plant" means a milk plant in any place, premise, or establishment where milk or milk products are collected, handled, processed, stored, pasteurized, bottled, or prepared for distribution. The establishment shall possess a valid permit signed by the administrator of the Arkansas Grade "A" Milk Program;

(6) "Grade 'A' milk producer" means any person who possesses a valid permit signed by the administrator of the Arkansas Grade "A" Milk Program, who operates a dairy farm and provides, sells, or offers milk for sale to a milk plant, receiving station, or transfer station; and

(7) "State" means the State of Arkansas.

History. Acts 1981, No. 506, § 2;
A.S.A. 1947, § 82-4017.

20-59-503. Creation — Members.

(a) There is created the Grade "A" Milk Program Advisory Committee to be composed of seven (7) members, to be selected as provided in this section. The committee shall be advisory to the Arkansas Grade "A" Milk Program for the purpose of recommending rules and regulations concerning Grade "A" milk and milk products and other health code standards within the Grade "A" milk industry of the state.

(b)(1) Four (4) members of the committee shall be appointed by the Governor from the Grade "A" milk industry of the state, two (2) of whom shall be Grade "A" milk producers, one (1) member shall be from a Grade "A" milk plant who is in general management, and one (1) member shall be from a grade "A" milk plant who is in production management.

(2) Three (3) members shall be appointed by the Governor from the Division of Sanitarian Services of the Department of Health, one of whom shall be the Director of the Division of Sanitarian Services, another to be the state Grade "A" milk survey officer, and one (1) member shall be a Grade "A" milk field sanitarian.

(3) No more than one (1) person from one (1) manufacturing firm or corporation can be elected or serve as a member of the committee at the same time.

(c) All members of the committee shall hold office for the period of six (6) years and until their successors have been duly elected and qualified.

(d) In the case of a vacancy on the committee, the Governor shall immediately appoint a successor to fill the unexpired term of the office.

(e)(1) Members of the committee shall serve without pay but may receive expense reimbursement in accordance with § 25-16-901 et seq.

(2) Expenses and mileage shall be paid from moneys in the Milk Inspection Fees Fund.

History. Acts 1981, No. 506, §§ 3, 6-10; 1983, No. 310, § 1; A.S.A. 1947, §§ 82-4018, 82-4021 — 82-4025; Acts 1997, No. 250, § 201.

Publisher's Notes. The terms of the initial members of the Grade "A" Milk

Program Advisory Committee were arranged so that two (2) members served for two (2) years, two (2) for four (4) years and three (3) for (6) six years.

Amendments. The 1997 amendment rewrote (e)(1).

20-59-504. Officers.

(a) The officers of the Grade "A" Milk Program Advisory Committee shall consist of a chair, a vice chair, and secretary, who shall at all times be members of the committee and residents of this state.

(b) Officers of the committee when elected shall hold office for the period of one (1) year each and until their respective successors shall have been elected and qualified.

(c) In the case of a vacancy in any office of the committee, the remaining members of the committee shall elect a successor to fill the unexpired term of the office.

(d)(1) The chair shall be the chief executive of the committee. He or she shall preside at the meetings of the committee. He or she shall have general supervision over the entire business of the committee. He or she shall see that all orders or resolutions of the committee are carried into effect. He or she shall submit to the members at each regular meeting thereof a complete report of the operations and the affairs of the committee for the preceding three (3) months. From time to time, he or she shall report to the committee all matters within his or her knowledge which the interests of the committee may require.

(2) The vice chair, in the absence or in case of inability of the chair to act, shall perform all the duties and have all the powers of the chair. The vice chair shall, in addition, perform such other duties and have such other powers as the committee may, from time to time by resolution, determine.

(3) The secretary shall keep the minutes of all meetings of the committee in books provided for that purpose. He or she shall keep a full, complete, and faithful record of all transactions which shall at all times be open to the inspection of the members of the committee. He or she shall also perform such other duties as may pertain to his or her office or as the chair or vice chair may require. In the absence of the secretary from any meeting of the committee, the records of the

proceedings shall be kept by such other person as may be appointed for that purpose at the meeting.

History. Acts 1981, No. 506, §§ 11-14, 16, 17; A.S.A. 1947, §§ 82-4026 — 82-4029, 82-4031, 82-4032.

20-59-505. Meetings.

(a)(1) Regular meetings of the members of the Grade "A" Milk Program Advisory Committee shall be held in the months of January, April, July, and October of each year at such time and place as may be designated by the committee.

(2) Notice of the time and place of the regular meetings shall be sent by the secretary to each member of the committee by mail at least ten (10) days and not more than thirty (30) days prior to the meeting.

(3) The mailed notice shall be addressed to each member at his or her address as it appears on the membership records of the committee.

(b) Special meetings of the committee shall be held whenever called by the chair or in his or her absence by the vice chair, or by two (2) of the members. The secretary, or if he or she refuses to act, two (2) members of the committee shall give written notice of each special meeting by letter at least five (5) days before the date of the meeting to each member of the committee by mail addressed to each member at his or her address as it appears on the membership records of the committee.

(c) A majority of the members of the committee shall constitute a quorum for business.

(d) Each member of the committee shall have the right to appoint with power of attorney another member in good standing to represent him or her at meetings of the committee.

History. Acts 1981, No. 506, §§ 15, 18, 19; A.S.A. 1947, §§ 82-4030, 82-4033, 82-4034.

RESEARCH REFERENCES

Ark. L. Rev. Watkins, Open Meetings Under the Arkansas Freedom of Information Act, 38 Ark. L. Rev. 268.

20-59-506. Review of proposed rules and regulations — Exceptions.

(a) The State Board of Health shall not adopt rules or regulations concerning Grade "A" milk or milk products or other health code standards related to the Grade "A" milk industry of this state until the rules or regulations have been reviewed by the Grade "A" Milk Program Advisory Committee in a regular or specially called meeting.

(b)(1) However, if a meeting is not held within forty-five (45) days after a written notice by the board of intent to promulgate rules and regulations, the review of the committee shall be deemed waived.

(2) The Director of the Department of Health and the board may adopt rules and regulations pertaining to the Grade "A" milk industry of this state in times of emergency or natural disaster without notice to the committee.

History. Acts 1981, No. 506, §§ 4, 5;
A.S.A. 1947, §§ 82-4019, 82-4020.

SUBCHAPTER 6 — PURCHASES BY MILK PROCESSORS

SECTION.

20-59-601. Definitions.
20-59-602. Escrow accounts.
20-59-603. Purchase requirements.
20-59-604. Civil penalties.

SECTION.

20-59-605. Exemption of certain cooperative associations and their members.
20-59-606. Criminal penalties.

20-59-601. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Cooperative association" means any group in which farmers act together in the market preparation, processing, or marketing of farm products or any association organized under § 2-2-101 et seq., § 2-2-401 et seq., or § 4-30-101 et seq.;

(2) "Dairy farmer" means a farmer engaged in the business of producing milk for sale to milk processors or to a cooperative association of which the dairy farmer is a member;

(3) "Escrow account agent" means an entity within this state which is insured either by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation;

(4) "Milk processor" means a person who operates a milk, milk products, or frozen desserts processing plant that is located in the State of Arkansas; and

(5) "Purchase price" means an amount of money, based on estimated butterfat content at the time of delivery, that a milk processor agrees to pay a dairy farmer for a purchase of raw milk.

History. Acts 1989, No. 4, § 1.

20-59-602. Escrow accounts.

(a)(1) Pursuant to the provisions of this section, a dairy farmer from whom milk was purchased by a milk processor may require the milk processor to establish an escrow account for the benefit of the dairy farmer for the payment of the purchase price of milk as specified in subdivision (a)(2) of this section.

(2) A dairy farmer may require the milk processor to establish an escrow account only if:

(A) The dairy farmer has failed to receive payment of the purchase price for the milk, and the dairy farmer has given written notice by registered mail, return receipt requested, to the milk processor by the end of the thirtieth day after the final date for payment of the purchase price that such payment has not been received; or

(B) A payment instrument received by the dairy farmer from the milk processor has been dishonored, and the dairy farmer has given written notice by registered mail, return receipt requested, to the milk processor by the end of the fifteenth business day after the day that the notice of dishonor was received.

(3) The notice specified by subdivision (a)(2) of this subsection shall require that an escrow account be established and that the payment received from the sale of any milk or dairy product as specified in subsection (b) of this section shall be deposited in the escrow account until the dairy farmer has received full payment of the purchase price for the milk.

(b)(1) The milk processor shall deposit upon receipt into the escrow account a proportional share of all payments received from the sale of milk or dairy products by the milk processor, which is equal to the amount of the milk sold by the dairy farmer to the processor in proportion to the total amount of milk purchased, for the sale of the milk and dairy products by the milk processor. The payments shall be deposited in the escrow account until the dairy farmer has received full payment for the purchase price for the milk.

(2) The escrow account shall be a segregated interest-bearing account and shall be established for the benefit of the dairy farmer. Upon sufficient proof of identification, the escrow account agent shall promptly pay to the dairy farmer any sum accumulated for his or her benefit in the escrow account.

(c)(1) If any milk processor is required to establish more than one (1) escrow account by operation of the provisions of this section, then the moneys accruing may all be commingled in a single account.

(2) The commingled moneys accumulated in the account shall be distributed to each dairy farmer in the amount due to each.

(3) If the commingled moneys accumulated in the account are insufficient to pay all the dairy farmers, the escrow account agent shall distribute the moneys so accumulated in proportion to the current amount due each.

(d) For the purposes of this section, the moneys held by the escrow account agent shall be deemed to be the property of the dairy farmer, or dairy farmers if such moneys have been commingled, in the current amount due to each, or in proportion to the amount due each.

History. Acts 1989, No. 4, § 2.

20-59-603. Purchase requirements.

A milk processor shall not purchase raw milk from a dairy farmer unless:

(1) Payment of the purchase price is made according to the provisions prescribed by any applicable federal milk marketing order;

(2) Any additional provisions are agreed upon by both the dairy farmer or his or her agent and the milk processor; and

(3) The medium of exchange used is cash, a check for the full amount of the purchase price, or a wire transfer of money in the full amount.

History. Acts 1989, No. 4, § 3.

20-59-604. Civil penalties.

A milk processor who fails to pay for raw milk as provided by this subchapter is liable to the dairy farmer for:

(1) The purchase price of the raw milk;

(2) Interest on the purchase price at the rate fixed by law for civil judgments commencing from the date possession is transferred until the date the payment is made in accordance with this subchapter; and

(3) A reasonable attorney's fee for the collection of the payment.

History. Acts 1989, No. 4, § 5.

20-59-605. Exemption of certain cooperative associations and their members.

This subchapter does not apply to transactions between a cooperative association, while acting as a marketing agent, and its members.

History. Acts 1989, No. 4, § 4.

20-59-606. Criminal penalties.

Any milk processor failing to establish an escrow account upon receipt of notification of a dairy farmer pursuant to the provisions of this subchapter or who fails to continue to make the payments until the dairy farmer has received full payment of the purchase price upon conviction shall be guilty of a misdemeanor and shall be punished by the imposition of a fine of not more than one thousand dollars (\$1,000) or by imprisonment in the county jail for a period not to exceed one (1) year, or both fine and imprisonment.

History. Acts 1989, No. 4, § 6.

SUBCHAPTER 7 — MILK LABORATORY ANTIBIOTIC DRUG

SECTION.

20-59-701. Definitions.

20-59-702. Testing program.

20-59-703. Rules and regulations.

SECTION.

20-59-704. Fees — Penalties.

20-59-705. Disposition of funds.

Effective Dates. Acts 1993, No. 701, § 8: Mar. 24, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that current economic conditions and budgetary constraints may limit the ability of the Department of Health to adequately provide necessary services in

the milk industry unless this act is implemented upon passage. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

20-59-701. Definitions.

As used in this subchapter:

(1) "Dairy cooperative" means an association of dairy producers organized for the mutual benefit of the dairy producers;

(2) "Dairy plant" means any place, premises, or establishment where milk or milk products are collected, handled, processed, stored, pasteurized, bottled, or prepared for distribution;

(3) "Dairy processor" means any place, premises, or establishment that receives raw milk and pasteurizes and prepares it for human consumption;

(4) "Dairy producer" means any person who produces bulk milk for sale to a dairy cooperative, dairy plant, or other processor;

(5) "Department" means the Department of Health;

(6) "Division" means the Division of Public Health Laboratories of the department;

(7) "Evaluation officer" means an individual who has been trained, tested, and certified by the department in accordance with guidelines established by the United States Food and Drug Administration Laboratory Quality Assurance Branch to certify milk industry laboratories to test milk for the presence of antibiotic drugs;

(8)(A) "Laboratory" means a laboratory that tests raw milk received from dairy producers for the presence of antibiotic drugs. A laboratory may be located in a dairy plant, dairy cooperative, receiving station, transfer station, or other place where milk samples from bulk trucks or dairy producers are collected or tested;

(B) "Laboratory" shall not include a laboratory that performs quality control tests developed by the Dairy Herd Improvement Association or any cooperative field person or plant field person who performs tests on milk quality or butterfat; and

(9) "Laboratory certification program" means a program administered by the Department of Health to certify laboratories to test milk for the presence of antibiotic drugs in a manner consistent with guidelines established by the United States Food and Drug Administration Laboratory Quality Assurance Branch.

History. Acts 1993, No. 701, § 1.

20-59-702. Testing program.

The Division of Public Health Laboratories of the Department of Health may establish a program to certify laboratories to test milk for the presence of antibiotic drugs and to certify evaluation officers to certify the laboratories in accordance with guidelines established by the United States Food and Drug Administration Laboratory Quality Assurance Branch. The program shall be known as the Milk Laboratory Antibiotic Drug Testing Program.

History. Acts 1993, No. 701, § 2.

20-59-703. Rules and regulations.

The Department of Health shall have the authority to promulgate such rules and regulations as necessary to administer this subchapter.

History. Acts 1993, No. 701, § 2.

20-59-704. Fees — Penalties.

(a)(1) By June 1 of each year, the Department of Health shall determine the cost of the laboratory certification program, which shall not exceed twenty-two thousand dollars (\$22,000) for the first fiscal year and which shall not exceed the actual cost of operating the program for any subsequent year.

(2) Each laboratory participating in the program shall be assessed a fee to be determined by dividing the total cost of operating the program by the number of laboratories participating in the program.

(3) Beginning on August 1 of each year that the program is in operation, the department shall collect fees from the laboratories.

(4) Failure to pay the assessed fee by October 1 of each year that the program is in operation will result in a late penalty of five percent (5%) of the assessed fee.

(5) Failure to pay the assessed fee and any penalty by October 31 shall render the laboratory certification invalid.

(b) Any laboratory that wishes to become certified in standard plate count, cryoscope, direct microscopic somatic cell count, and electronic somatic cell count shall be assessed an additional fee of seven hundred fifty dollars (\$750) to be paid by August 1 of each year.

History. Acts 1993, No. 701, § 3.

20-59-705. Disposition of funds.

(a) All fees and fines collected under this subchapter are hereby declared special revenues and shall be deposited in the State Treasury to the credit of the Public Health Fund. All fees and fines collected under this subchapter are to be spent solely in support of the Milk Laboratory Antibiotic Drug Testing Program.

(b) Subject to such rules and regulations as may be implemented by the Chief Fiscal Officer of the State, the disbursing officer for the Department of Health is hereby authorized to transfer all unexpended funds relative to the program that pertain to fees collected, as certified by the Chief Fiscal Officer of the State, to be carried forward and made available for the expenditure for the same purpose for any following fiscal year.

History. Acts 1993, No. 701, § 4.

CHAPTER 60

MEAT AND MEAT PRODUCTS

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. ARKANSAS MEAT AND MEAT PRODUCTS INSPECTION ACT.
3. MEAT AND MEAT PRODUCTS CERTIFICATION ACT.

RESEARCH REFERENCES

Am. Jur. 35 Am. Jur. 2d, Food, § 35. **C.J.S.** 36A C.J.S., Food, § 6(5).

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 20-60-101. Use of imported meat in food establishment.
- 20-60-102. Arkansas bacon.

20-60-101. Use of imported meat in food establishment.

(a)(1) As used in this section, "food service establishment" means any fixed or mobile restaurant, coffee shop, cafeteria, short-order cafe, luncheonette, grille, tearoom, soda fountain, sandwich shop, hotel kitchen, smorgasbord, tavern, bar, cocktail lounge, night club, roadside stand, industrial feeding establishment, school lunch project, private, public, or nonprofit organization or institution routinely serving the public, catering kitchen, commissary, or similar place in which the food or drink is prepared for sale or for service on the premises or elsewhere; or any grocery store, delicatessen, meat market, retail bakery, or other establishment which sells or otherwise provides food for immediate or on-premise consumption, regardless of whether serving food for immediate consumption is the primary activity of the business; and any other eating and drinking establishment where food is served or provided for the public with or without charge.

(2) The following places where food is served shall be exempt from the definition of a food service establishment:

- (A) Group homes routinely serving ten (10) or fewer persons;
- (B) Day care centers routinely serving ten (10) or fewer persons;

(C) Potluck suppers, community picnics, or other group gatherings where food is served but not sold;

(D) Nonprofit organizations that sell food, on a temporary basis, for fund-raising events; and

(E) Hospital kitchens and nursing home kitchens.

(b) All food service establishments shall indicate on their menus or on a notice prominently placed in the establishment whether beef imported from outside the United States is served if the proprietor of the establishment knowingly, willfully, and consistently serves imported beef.

(c) Any person found guilty of violating this section shall be fined ten dollars (\$10.00) for the first offense and twenty dollars (\$20.00) for the second or subsequent offense.

History. Acts 1979, No. 595, §§ 1-3; A.S.A. 1947, §§ 82-980 — 82-980.2.

Cross References. Food service establishments, § 20-57-201 et seq.

20-60-102. Arkansas bacon.

(a) The term “Arkansas bacon” shall not be used to identify any meat product other than the pork shoulder blade Boston roast prepared in Arkansas in accordance with this section. Pork shoulder blade Boston roast prepared outside the State of Arkansas but in the manner prescribed by this section may be identified as “Arkansas-style bacon”.

(b) “Arkansas bacon” and “Arkansas-style bacon” are produced from the pork shoulder blade Boston roast by removing the neck bones and rib bones by cutting close to the underside of those bones, removing the blade bone or scapula, and removing the dorsal fat covering, including the skin or clear plate, and leaving no more than one-quarter inch ($\frac{1}{4}$) of the fat covering the roast. The meat is then dry-cured with salt, sugar, nitrites, and spices, and smoked with natural smoke. The meat may not be injected or soaked in curing brine, nor may any artificial or liquid smoke be applied to the meat. The pork shoulder blade Boston roast includes the porcine muscle, fat, and bone cut interior of the second or third thoracic vertebrae and posterior of the atlas joint or first cervical vertebrae, and dorsal of the center of the humerus bone.

(c) Any person who labels or otherwise identifies meat contrary to the provisions of this section shall be deemed guilty of a misdemeanor punishable by a fine not to exceed one thousand dollars (\$1,000).

History. Acts 1987, No. 326, §§ 1-3.

SUBCHAPTER 2 — ARKANSAS MEAT AND MEAT PRODUCTS INSPECTION ACT

SECTION.

- 20-60-201. Title.
- 20-60-202. Policy.
- 20-60-203. Definitions.
- 20-60-204. Exceptions.
- 20-60-205. Penalties.
- 20-60-206. Director of the Department of

SECTION.

- Health — Powers and duties.
- 20-60-207. Compliance with subchapter required.
- 20-60-208. Application for license or exemption.

SECTION.

20-60-209. Inspection and sanitary practices required.

20-60-210. Inspection procedures.

20-60-211. Withdrawal and denial of inspection.

SECTION.

20-60-212. Cost.

20-60-213. Labeling and marking.

20-60-214. Prohibited acts.

20-60-215. Records.

Effective Dates. Acts 1967, No. 320, § 20: July 1, 1967.

Acts 1969, No. 351, § 3: Apr. 7, 1969. Emergency clause provided: "It is hereby found and determined by the General Assembly that the provisions of Act 320 of 1967 have worked undue hardship upon meat processing plants in this State who engage in the business of custom slaughtering and processing of livestock for the use and consumption by the owner thereof without the same being sold in interstate commerce; and that the immediate passage of this Act is necessary to clarify the existing meat inspection law and to remove the discrimination against custom slaughtering and processing of livestock. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1973, No. 311, § 3: Mar. 13, 1973. Emergency clause provided: "It is hereby found and determined by the General Assembly that the provisions of Act 320 of 1967, as amended by Act 351 of 1969, have worked undue hardship on meat processing establishments which engage in the

business of custom slaughtering and processing of livestock for the use and consumption by the owner thereof, in that said establishments are prohibited from buying or selling meat or meat food products which have been officially inspected, marked, and labeled. It is further found in the language of the Act 351, contradiction to the intent and provisions of the Wholesale Meat Act of December, 1967, as amended by Public Law 91-342 of July, 1970 (Curtis Amendment), thereby endangering the "Equal-to-Federal" status of the Arkansas Meat Inspection Program administered by the Arkansas State Department of Health, Meat Inspection Division; and that immediate passage of this Act is necessary to clarify the existing meat inspection law and to remove the discrimination against the custom slaughterer and processor of livestock who otherwise may be entitled to exempted status under the provisions of the Act. Therefore, an emergency is hereby declared to exist and this Act, being immediately necessary for the preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

20-60-201. Title.

This subchapter may be cited as the "Arkansas Meat and Meat Products Inspection Act".

History. Acts 1967, No. 320, § 1; A.S.A. 1947, § 82-2001.

Cross References. Kosher foods, § 20-57-401.

20-60-202. Policy.

(a) Meat and meat food products are an important source of the supply of human food in this state, and legislation to assure that the food supplies are wholesome, unadulterated, and otherwise fit for human consumption and properly labeled is in the public interest.

(b) Therefore, it is declared to be the policy of this state to provide for the inspection of livestock slaughtered, and the carcasses, parts thereof, and meat food products processed therefrom, for human food, at certain establishments to prevent the distribution in intrastate commerce, for human consumption, of livestock carcasses and parts thereof and meat food products which are unwholesome, adulterated, or otherwise unfit for human food, or are improperly labeled or falsely advertised.

History. Acts 1967, No. 320, § 2;
A.S.A. 1947, § 82-2002.

20-60-203. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Adulterated" shall apply to any livestock carcass, part thereof, or meat food product under one (1) or more of the following circumstances:

(A) If it bears or contains any poisonous or deleterious substance which may render it injurious to health. However, if the substance is not an added substance, the article shall not be considered adulterated under this clause if the quantity of the substance does not ordinarily render it injurious to health;

(B) If it bears or contains any added poisonous or added deleterious substance, unless the substance is permitted in its production or unavoidable under good manufacturing practices as may be determined by rules and regulations prescribed by the director. However, any quantity of added substances exceeding the limit so fixed shall also be deemed to constitute adulteration;

(C) If any substance has been substituted, wholly or in part, therefor;

(D) If damage or inferiority has been concealed in any manner;

(E) If any valuable constituent has been in whole or in part omitted or abstracted therefrom;

(F) If any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is;

(2) "Advertisement" means all representations disseminated in any manner or by any means other than by labeling for the purpose of inducing or which are likely to induce, directly or indirectly, the purchase of meat or meat products;

(3) "Board" means the State Board of Health;

(4) "Container" and "package" include any box, can, tin, cloth, plastic, or any other receptacle, wrapper, or cover;

(5) "Director" means the Director of the Department of Health of this state, or any person authorized to act in his or her stead;

(6) "Federal Meat Inspection Act" means the Act of Congress approved March 4, 1907, as amended and extended, and the imported meat provisions of subsections 306 (b) and (c) of the Tariff Act of 1930, as amended;

(7) "Immediate container" means any consumer package or any other container in which an article, not consumer packaged, is packed;

(8) "Inspection service" means the official governmental service within the Department of Health of this state designated by the director as having the responsibility for carrying out the provisions of this subchapter;

(9) "Inspector" means an employee or official of this state authorized by the director to inspect livestock or carcasses or parts thereof, or meat food products under the authority of this subchapter;

(10) "Intrastate commerce" means commerce within this state;

(11) "Label" means any written, printed, or graphic material upon the shipping container, if any, or upon the immediate container including, but not limited to, any individual consumer package of an article or accompanying the article;

(12) "Livestock" means cattle, sheep, swine, goats, or horses;

(13) "Meat" means any edible part of the carcass of any livestock;

(14) "Meat food product" means any article of food, or any article intended for or capable of use as human food, which is derived or prepared, in whole or in part, from any portion of any livestock, unless exempted by the director upon his or her determination that the article:

(A) Contains only a minimal amount of meat and is not represented as a meat food product; or

(B) Is for medicinal purposes and is advertised only to the medical profession;

(15) "Official establishment" means any establishment in this state as determined by the director at which inspection of the slaughter of livestock or the processing of livestock or carcasses or parts thereof, or meat food products is maintained under the authority of this subchapter. However, the term "official establishment" as used in this subchapter shall not be construed to mean livestock or meat sold by the producer thereof on his, her, or its own farm or ranch on an occasional basis directly to the consumer and user thereof;

(16) "Official inspection mark" means any symbol, formulated pursuant to rules and regulations prescribed by the director, stating that an article was inspected and passed;

(17) "Person" means any individual, partnership, corporation, association, or any other business entity;

(18) "Shipping container" means any container used or intended for use in packaging the article packed in an immediate container;

(19) "Unwholesome" means:

(A) Unsound, injurious to health, containing any biological residue not permitted by rules or regulations prescribed by the director, or otherwise rendered unfit for human food;

(B) Consisting in whole or in part of any filthy, putrid, or decomposed substance;

(C) Processed, prepared, packed, or held under unsanitary conditions whereby any livestock carcass or part thereof or any meat food product may have become contaminated with filth or may have been rendered injurious to health;

(D) Produced in whole or in part from livestock which has died otherwise than by slaughter; or

- (E) Packaged in a container composed of any poisonous or deleterious substance which may render the contents injurious to health; and
- (20) "Wholesome" means sound, healthful, clean, and otherwise fit for human food.

History. Acts 1967, No. 320, § 3; Subsection 306(b) of the Tariff Act of 1930 A.S.A. 1947, § 82-2003. has been repealed, and subsection 306(c) of that act is codified as 19 U.S.C. § 1306(c).

U.S. Code. The Federal Meat Inspection Act referred to in this section is codified primarily as 21 U.S.C. § 601 et seq.

20-60-204. Exceptions.

(a)(1) The Director of the Department of Health shall, by regulation and under such conditions as to labeling, sanitary standards, practices, and procedures as he or she may prescribe, exempt from specific provisions of this subchapter:

(A) Livestock producers with respect to livestock carcasses and parts thereof, and meat food products, processed by them from livestock of their own raising on their own farms and used by them for personal or private consumption, but in no instance where the product is to be offered or used for public consumption;

(B) Any person engaged in slaughtering livestock or processing livestock carcasses or parts thereof or meat food products for intrastate commerce and the articles so processed by the person, whenever the director determines that it would be impracticable to provide inspection and that the exemption will aid in the effective administration of this subchapter;

(C) Persons slaughtering livestock or otherwise processing or handling livestock carcasses or parts thereof, or meat food products, which have been or are to be processed as required by recognized religious dietary laws, to the extent that the director determines is necessary to avoid conflict with the requirements while still effectuating the purposes of this subchapter;

(D) Any establishment engaged in slaughtering livestock or processing livestock carcasses or parts thereof, or meat food products for intrastate commerce, and the articles so processed by the establishment when the establishment is subject to inspection under a city ordinance which sets standards in conformity with the minimum standards determined by the director.

(2) The director may, by order, suspend or terminate any exemption under this section with respect to any person whenever he or she finds that the action will aid in effectuating the purposes of this subchapter.

(b) This subchapter shall not apply to any act or transaction subject to regulation under the Federal Meat Inspection Act, where the standards required under the federal act are in conformity with the minimum standards determined by the director.

(c)(1) This subchapter shall not apply to the custom slaughtering by any person, firm, or corporation of cattle, sheep, swine, or goats

delivered by the owner thereof for the slaughter and the preparation by the slaughterer and transportation in commerce of the carcass parts thereof, meat, and food products of the animals, exclusively for use in the household of the owner by him and members of his household and his nonpaying guests and employees.

(2) However, the custom slaughterer or processor must not engage in the business of buying or selling any carcass, parts thereof, meat, or food products of any cattle, sheep, swine, goats, or equines capable of use as human food except those products which have been inspected and passed for wholesomeness under continuous state or federal board of agriculture inspection and are properly marked or labeled with the official inspection legends of the appropriate agency.

(3) To maintain entitlement for exemption:

(A) The custom establishment must comply with the regulations which the director is authorized to promulgate to assure that any carcasses, parts thereof, meat, or meat food products prepared or any containers or packages containing uninspected, exempted custom products are separated at all times from inspected carcasses, parts thereof, or meat, or meat food products prepared for sale;

(B) All uninspected products prepared on an exempted custom basis must be plainly marked "Not For Sale" immediately after being prepared and kept so identified until delivered to the owner;

(C) The establishment conducting the exempted custom operation must be maintained and operated in a sanitary manner; and

(D) The products so prepared must not be adulterated, mislabeled, or misbranded according to the provisions of this subchapter.

(d) This subchapter shall not affect any existing right of cities or towns to levy occupation taxes or license fees against establishments covered in this subchapter.

History. Acts 1967, No. 320, §§ 10, 15; 1969, No. 351, § 1; 1973, No. 311, § 1; A.S.A. 1947, §§ 82-2010, 82-2015.

U.S. Code. The Federal Meat Inspection Act, referred to in this section, is codified as 21 U.S.C. § 601 et seq.

20-60-205. Penalties.

(a) Any person who violates the provisions of this subchapter shall upon conviction be subject to imprisonment for not more than six (6) months or a fine of not less than one hundred dollars (\$100) nor more than three thousand dollars (\$3,000), or both imprisonment and fine.

(1) If the violation is committed after one (1) conviction of the person under this section, the person shall be subject to imprisonment for not more than one (1) year or a fine of not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000), or both imprisonment and fine.

(2) If the violation is committed after two (2) or more convictions of the person under this section have become final, the person shall be subject to imprisonment for not more than two (2) years or a fine of not

less than three thousand dollars (\$3,000) nor more than ten thousand dollars (\$10,000), or both imprisonment and fine.

(b) When construing or enforcing the provisions of this subchapter, the act, omission, or failure of any person acting for or employed by an individual, partnership, corporation, association, or other business unit within the scope of his employment or office shall in every case be deemed the act, omission, or failure of the individual, partnership, corporation, association, or other business unit, as well as of the person.

(c) No carrier or warehouseman shall be subject to the penalties of this subchapter other than the penalties for violation of § 20-60-215 by reason of his receipt, carriage, holding, or delivery in the usual course of business as a carrier or warehouseman of livestock carcasses, parts thereof, or meat food products owned by another person unless the carrier or warehouseman has knowledge or is in possession of facts which would cause a reasonable person to believe that the articles were not inspected or marked in accordance with the provisions of this subchapter or were not otherwise in compliance with this subchapter.

(d) Nothing in this subchapter shall be construed as requiring the director to report violations of this subchapter for criminal prosecution whenever he believes that the public interest will be adequately served and compliance with this subchapter obtained by a suitable written notice of warning.

History. Acts 1967, No. 320, §§ 11, 12;
A.S.A. 1947, §§ 82-2011, 82-2012.

20-60-206. Director of the Department of Health — Powers and duties.

(a)(1) The Director of the Department of Health shall promulgate such rules and regulations and appoint such veterinarians and other qualified personnel as are necessary to carry out the purposes or provisions of this subchapter. The rules and regulations shall be in conformity with the rules and regulations under the Federal Meat Inspection Act as now in effect and with subsequent amendments thereof unless they are considered by the director as not to be in accord with the objectives of this subchapter.

(2) Notice of proposed rules and regulations shall be given all establishments licensed under this subchapter. A hearing shall be called by the director at which proponents and opponents of the proposed rules and regulations shall be given the opportunity to present arguments supporting their positions. The time, place, and procedure for the hearing shall be determined by the director. No proposed rules and regulations shall become effective until after the hearing.

(b) The director may cooperate with the federal government in carrying out the provisions of this subchapter and the Federal Meat Inspection Act.

History. Acts 1967, No. 320, §§ 14, 15; A.S.A. 1947, §§ 82-2014, 82-2015.

U.S. Code. The Federal Meat Inspec-

tion Act, referred to in this section, is codified as 21 U.S.C. § 601 et seq.

20-60-207. Compliance with subchapter required.

No establishment in this state shall slaughter any livestock or process any livestock carcasses, or parts thereof, or meat food products for human consumption except in compliance with the requirements of this subchapter.

History. Acts 1967, No. 320, § 8; A.S.A. 1947, § 82-2008.

20-60-208. Application for license or exemption.

(a) Applications for inspection or exemption shall be made on forms furnished by the Director of the Department of Health.

(b) A license shall be good for one (1) year, or any quarter thereof, expiring on December 31 of the year it is issued.

(c) Applicants for licenses shall be required to obtain a license for each establishment owned by them.

(d) Before any license is issued, an inspection shall be made by the director to determine the acceptability of the establishment to do business as desired by the applicant in his or her application for license or exemption.

History. Acts 1967, No. 320, § 8; A.S.A. 1947, § 82-2008.

20-60-209. Inspection and sanitary practices required.

(a) Each official establishment at which livestock are slaughtered or livestock carcasses or parts thereof or meat food products are processed for intrastate commerce shall have the premises, facilities, and equipment inspected and shall be operated in accordance with such sanitary practices as are required by rules or regulations prescribed by the Director of the Department of Health for the purpose of preventing the entry into and movement in commerce of carcasses, parts thereof, and meat food products which are unwholesome or adulterated.

(b) No livestock carcasses or parts thereof, or meat food product, shall be admitted into any official establishment unless they have been prepared only under inspection pursuant to this subchapter or the Federal Meat Inspection Act or their admission is permitted by rules or regulations prescribed by the director under this subchapter.

(c) The director shall refuse to render inspection to any establishment whose premises, facilities, or equipment, or the operation thereof, fail to meet the requirements of this section.

History. Acts 1967, No. 320, § 5; A.S.A. 1947, § 82-2005. tion Act referred to in this section is codified as 21 U.S.C. § 601 et seq.

U.S. Code. The Federal Meat Inspec-

20-60-210. Inspection procedures.

(a) For the purpose of preventing the entry into or movement in intrastate commerce of any livestock carcass, part thereof, or meat food product which is unwholesome or adulterated and is intended for or capable of use as human food, the Director of the Department of Health shall, where and to the extent considered by him or her necessary, cause to be made by inspectors antemortem inspection of livestock in any official establishment where livestock are slaughtered for such commerce.

(b) For the purpose stated in subsection (a) of this section, the director, whenever slaughtering or other processing operations are being conducted, shall cause to be made by inspectors postmortem inspection of the carcasses and parts thereof of each animal slaughtered in any official establishment. He or she shall cause to be made by inspectors an inspection of all meat food products processed in any official establishment in which meat food products are processed for intrastate commerce.

(c) The director shall also cause, at any time, such quarantine, segregation, and reinspection of livestock, livestock carcasses, and parts thereof, and meat food products in official establishments as he deems necessary to effectuate the purposes of this subchapter.

(d)(1) All livestock carcasses and parts thereof, and meat food products, found by an inspector to be unwholesome or adulterated in any official establishment shall be condemned and shall, if no appeal is taken from the determination of condemnation, be destroyed for human food purposes under the supervision of an inspector.

(2) However, articles, which may be made wholesome and unadulterated by reprocessing need not be condemned and destroyed if reprocessed under the supervision of an inspector and thereafter found to be wholesome and unadulterated.

(3) If any appeal is taken from the determination, the articles shall be appropriately marked and segregated pending completion of an appeal inspection. If the determination of condemnation is sustained, the articles shall be destroyed for human food purposes under the supervision of an inspector.

History. Acts 1967, No. 320, § 4; A.S.A. 1947, § 82-2004.

20-60-211. Withdrawal and denial of inspection.

(a) The Director of the Department of Health may withdraw or otherwise deny inspection under this subchapter with respect to any establishment for such period as he or she deems necessary to effectuate

ate the purposes of this subchapter for any violation of the subchapter or any requirements thereunder by the operation of the establishment.

(b)(1) However, before a withdrawal or denial of inspection is ordered, the director shall give the affected establishment an opportunity for a hearing at which the establishment may present evidence that it has not violated the subchapter or any requirements thereunder.

(2) The hearing shall be held after notice to the establishment in such manner as the director shall determine by his or her rules and regulations.

History. Acts 1967, No. 320, § 13;
A.S.A. 1947, § 82-2013.

20-60-212. Cost.

(a) The cost of inspection rendered under this subchapter shall be borne by this state. The cost of overtime and holiday work performed in establishments subject to the provisions of this subchapter at such rates as the Director of the Department of Health may determine shall be borne and paid by the establishments. An inspector performing overtime and holiday work shall be treated as though he or she were on compensatory leave at such compensation as shall equal the rates set by the director.

(b) There is authorized to be appropriated such sums as are necessary to carry out the provisions of this subchapter.

History. Acts 1967, No. 320, §§ 16, 17;
A.S.A. 1947, §§ 82-2016, 82-2017.

20-60-213. Labeling and marking.

(a)(1) Each shipping container of any meat or meat food product, inspected under the authority of this subchapter and found to be wholesome and not adulterated, shall at the time the product leaves the official establishment bear, in distinctly legible form, the official inspection mark and the approved plant number of the official establishment in which the contents were processed.

(2) Each immediate container of any meat or meat food product, inspected under the authority of this subchapter and found to be wholesome and not adulterated, shall at the time the product leaves the official establishment bear, in addition to the official inspection mark, in distinctly legible form, the name of the product, a statement of ingredients if fabricated from two (2) or more ingredients, including a declaration as to artificial flavors, colors, or preservatives, if any, the net weight or other appropriate measure of the contents, the name and address of the processor, and the approved plant number of the official establishment in which the contents were processed. The name and address of the distributor may be used in lieu of the name and address of the processor if the approved plant number is used to identify the official establishment in which the article was prepared and packed.

(3) Each livestock carcass and each primal part of a carcass shall bear the official inspection mark and approved plant number of the establishment when it leaves the official establishment.

(4) The Director of the Department of Health may by rules or regulations require additional marks or label information to appear on livestock carcasses or parts thereof or meat food products when they leave the official establishments or at the time of their transportation or sale in this state. He or she may permit reasonable variations and grant exemptions from the marking and labeling requirements of this section in any number not in conflict with the purposes of this subchapter.

(5) Marks and labels required under this section shall be applied only by or under the supervision of an inspector.

(b) The use of any advertising or any written, printed, or graphic matter upon or accompanying any livestock carcass, or part thereof, or meat food product inspected or required to be inspected pursuant to the provisions of this subchapter, or the container thereof which is false or misleading in any particular, is prohibited.

(c)(1) No livestock carcasses or parts thereof or meat food products inspected or required to be inspected pursuant to the provisions of this subchapter shall be sold or offered for sale by any person, firm, or corporation under any false or deceptive name, but established trade names which are usual to the articles and which are not false or deceptive and which are approved by the director are permitted.

(2) If the director has reason to believe that any advertising or any label in use or prepared for use is false or misleading in any particular, he or she may direct that the use of the advertising or label be withheld unless it is modified in such manner as he or she may prescribe so that it will not be false or misleading.

(3) If the person using or proposing to use any advertising or the label does not accept the determination of the director, he or she may request a hearing, but the use of the advertising or the label shall, if the director so directs, be withheld pending hearing and final determination by the director.

(4) Any determination by the director shall be conclusive unless within thirty (30) days after the receipt of notice of the final determination, the person adversely affected thereby appeals to the Circuit Court of Pulaski County.

History. Acts 1967, No. 320, § 6;
A.S.A. 1947, § 82-2006.

20-60-214. Prohibited acts.

The following acts or the causing thereof within this state are prohibited:

(1) The processing for, or the sale or offering for sale, transportation, or delivery or receiving for transportation, in intrastate commerce, of any livestock carcass or part thereof, or meat food product unless the article has been inspected for wholesomeness and unless the article and

its shipping container and immediate container, if any, are marked in accordance with the requirements under this subchapter or the Federal Meat Inspection Act;

(2) The sale or other disposition for human food of any livestock carcass or part thereof or meat food product which has been inspected and declared to be unwholesome or adulterated under this subchapter;

(3) Falsely making or issuing, altering, forging, simulating, counterfeiting, or using without proper authority any official inspection certificate, memorandum, mark, or other identification, or device for making a mark or identification, used in connection with inspection under this subchapter; or causing, procuring, aiding, assisting in, or being a party to false making, issuing, altering, forging, simulating, counterfeiting, or unauthorized use; or knowingly possessing, without promptly notifying the Director of the Department of Health or his or her representative, uttering, publishing, or using as true, or causing to be uttered, published, or used as true, any falsely made or issued, altered, forged, simulated, or counterfeited official inspection certificate, memorandum, mark, or other identification, or device for making a mark or identification; or representing that any article has been officially inspected under the authority of this subchapter when the article has in fact not been so inspected; or knowingly making any false representation in any certificate prescribed by the director in rules or regulations under this subchapter or any form resembling the certificate;

(4) Using in intrastate commerce any false or misleading advertising with respect to meat or meat products;

(5) Using in intrastate commerce any false or misleading label on any livestock carcass or part thereof, or meat food product;

(6) The use of any container bearing an official inspection mark except for the article in the original form in which it was inspected and covered by the mark unless the mark is removed, obliterated, or otherwise destroyed;

(7) The refusal to permit access by any authorized representative of the director at all reasonable times to the premises of an establishment in this state at which livestock are slaughtered or the carcasses or parts thereof or meat food products are processed for intrastate commerce upon presentation of appropriate credentials;

(8) The refusal to permit access to and the copying of any record as authorized by § 20-60-215;

(9) The using by any person to his or her own advantage, or revealing, other than to the authorized representatives of any government agency in their official capacity, or to the courts when relevant in any judicial proceeding, any information acquired under the authority of this subchapter, concerning any matter which as a trade secret is entitled to protection;

(10) Delivering, receiving, transporting, selling, or offering for sale or transportation in intrastate commerce for human consumption any livestock carcass or part thereof or meat food product which has been processed in violation of any requirements under this subchapter

except as may be authorized by and pursuant to rules and regulations prescribed by the director;

(11) Delivering, receiving, transporting, selling, or offering for sale or transportation in intrastate commerce any livestock carcass, or part thereof, or meat food product which is exempted under § 20-60-204, is unwholesome or adulterated, and is intended for human consumption; and

(12) Applying to any livestock carcass, or part thereof, or meat food product, or any container thereof, any official inspection mark or label required under this subchapter except by or under the supervision of an inspector.

History. Acts 1967, No. 320, § 7; A.S.A. 1947, § 82-2007. tion Act, referred to in this section, is codified as 21 U.S.C. § 601 et seq.

U.S. Code. The Federal Meat Inspec-

20-60-215. Records.

(a) For the purpose of enforcing the provisions of this subchapter, persons engaged in this state in the business of processing for intra-state commerce or transporting, shipping, or receiving in commerce livestock slaughtered for human consumption or meat or meat food products, or holding articles so received, shall maintain the records as the Director of the Department of Health by regulation may require, showing, to the extent that they are concerned therewith, the receipt, delivery, sale, movement, or disposition of the articles and shall, upon the request of an authorized representative of the director, permit him or her at reasonable times to have access to and to copy all the records.

(b) Any record required to be maintained by this section shall be maintained for a period of two (2) years after the transaction which is subject to the record has taken place.

History. Acts 1967, No. 320, § 9; A.S.A. 1947, § 82-2009.

SUBCHAPTER 3 — MEAT AND MEAT PRODUCTS CERTIFICATION ACT

SECTION.

- 20-60-301. Title.
- 20-60-302. Policy.
- 20-60-303. Regulatory authority of the Director of the Department of Health.
- 20-60-304. Acceptance service — Author-

SECTION.

- ity of meat inspectors.
- 20-60-305. Acceptance service — Availability.
- 20-60-306. Acceptance service — Cost.
- 20-60-307. Appropriations.

Effective Dates. Acts 1971, No. 468, § 10: July 1, 1971.

20-60-301. Title.

This subchapter may be cited as the "Meat and Meat Products Certification Act".

History. Acts 1971, No. 468, § 1;
A.S.A. 1947, § 82-2018.

20-60-302. Policy.

(a) Meat and meat products are purchased by numerous agencies administered and operated by the State of Arkansas. These products are procured by competitive bidding methods and in accordance with official published specifications.

(b) It is declared to be the policy of this state to grant authority to the Department of Health to provide an acceptance service designed to assure state institutional users of meat and meat products that the meats they purchase comply with the provisions and detailed specifications approved by the Office of Procurement of the Department of Finance and Administration.

History. Acts 1971, No. 468, § 2;
A.S.A. 1947, § 82-2019.

20-60-303. Regulatory authority of the Director of the Department of Health.

The Director of the Department of Health shall promulgate such rules and regulations as are necessary to carry out the purposes and provisions of this subchapter.

History. Acts 1971, No. 468, § 5;
A.S.A. 1947, § 82-2022.

20-60-304. Acceptance service — Authority of meat inspectors.

(a) The acceptance service to be provided by the Department of Health is to be accomplished by employees of the state who are authorized to inspect livestock, carcasses or parts thereof, or meat food products under the provisions of the Arkansas Meat and Meat Products Inspection Act, § 20-60-201 et seq.

(b) Department meat inspectors are designated and authorized to certify as to whether or not meat and meat products conform with specification requirements cited in official purchase agreements regarding requirements such as type, class, style, weight range, state of refrigeration, required packaging, and other suitability factors.

History. Acts 1971, No. 468, § 3;
A.S.A. 1947, § 82-2020.

20-60-305. Acceptance service — Availability.

The acceptance service shall be made available to all official establishments operating under the direct supervision of the Division of Sanitarian Services of the Department of Health under the provisions of the Arkansas Meat and Meat Products Inspection Act, § 20-60-201 et seq.

History. Acts 1971, No. 468, § 4;
A.S.A. 1947, § 82-2021.

20-60-306. Acceptance service — Cost.

The cost of providing the acceptance service and ensuing certification shall be borne and paid by the seller, slaughterer or processor, or vendor or merchant requesting the service at such rate as the Director of the Department of Health may determine as being necessary to defer the cost of this service.

History. Acts 1971, No. 468, § 6;
A.S.A. 1947, § 82-2023.

20-60-307. Appropriations.

There is authorized to be appropriated such sums as are necessary to carry out the provisions of this subchapter.

History. Acts 1971, No. 468, § 7;
A.S.A. 1947, § 82-2024.

CHAPTER 61

FISH AND SEAFOOD

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. ARKANSAS CATFISH MARKETING ACT OF 1975.
3. CATFISH — IDENTIFICATION BY RESTAURANTS.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

20-61-101. Foreign fish.

Effective Dates. Acts 1971, No. 367, § 6: Mar. 23, 1971. Emergency clause provided: "It is hereby found and determined by the General Assembly that many fish sold to the consuming public of this State, which are imported from foreign countries, are not properly labeled to identify the country of origin and the appropriate name of such products; that many such

fish are not packaged in the country of origin in accordance with the sanitary requirements required of fish produced in this State or in this Country; and that the immediate passage of this Act is necessary to enable the consuming public to determine the country of origin from which fish are produced, and related information which will enable the purchaser thereof to

take whatever actions are necessary for the protection of the health and safety of himself and the members of his family, or the public to whom any such products may be sold or offered for sale. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1973, No. 519, § 2: Mar. 30, 1973. Emergency clause provided: "It is hereby found and determined by the General Assembly that many fish processing plants outside this State, and in foreign countries, do not meet the sanitary requirements of processing fish as are required

under the laws and regulations of this State, and that the protection of the health and safety of the people of this State require that fish packaged and processed outside this State, which is sold to consumers in this State, shall have been packaged and processed under sanitary conditions meeting at least the minimum requirements of the laws and regulations of this State for fish processing plants, and that the immediate passage of this Act is necessary to accomplish said purpose. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

20-61-101. Foreign fish.

(a) No fresh, cold storage, or frozen fish produced outside this state or in any foreign country and imported into the United States shall be sold or offered for sale in this state by any food establishment unless:

(1) The package or container containing the food bears a statement in writing naming thereon the country of origin, the date of packaging, and the common name of all fish contained therein; and

(2) The fish has been packaged and processed under sanitary conditions equal to the standards required by the laws and regulations of this state for fish processing plants.

(b)(1) Outlets serving cooked, fresh, cold storage, or frozen fish at retail which display on the menu or in some conspicuous public place in the outlet the identity of the country of origin and the common name of all fish as reflected on the menu or sold in the outlet shall be deemed as having satisfied the requirements of subdivision (a)(1) of this section.

(2) All suppliers of any fresh, cold storage, or frozen fish shall furnish to the distributor or retailer to which the products are sold in this state an affidavit that all products are properly labeled, as required in this section, with respect to the country of origin of and the contents of any foreign imported fish. This affidavit shall include a certificate that the supplier has caused each of the products to be properly labeled in conformance with the requirements of this section.

(3) In addition, all suppliers of any fresh, cold storage, or frozen fish shall furnish to any distributor or retailer to which the product is sold in this state proof that the fish has been packaged and processed under sanitary conditions equal to the sanitary conditions required of fish processing plants in this state. The proof may be upon certification by the Department of Health or certification by the United States Food and Drug Administration or other appropriate federal agency that the processing plant in which the fish was packaged or processed meets

sanitary conditions within at least the minimum requirements of the laws and regulations of this state for fish processing plants, or proof may be upon the certification of the supplier that the fish packaged or processed outside this state, or in a foreign country, was packaged or processed in a fish processing plant that meets at least the minimum requirements of the laws and regulations of this state for sanitary conditions for fish processing plants.

(c) Any supplier of fresh, cold storage, or frozen fish or any distributor or retailer who sells any fish in this state in violation of the provisions of this section shall each be individually and severally subject to the criminal penalties as provided in subsection (d) of this section.

(d)(1) Violations of the provisions of this section shall be punishable for a first offense by a fine of not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100) or by imprisonment in the county jail for a period not exceeding thirty (30) days.

(2) Subsequent violations of this section shall be punishable by a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) or by imprisonment in the county jail for not more than ninety (90) days, or by both fine and imprisonment.

(3) Each separate violation of the provisions of this section shall constitute a separate offense and shall be punishable accordingly.

(e) The provisions of this section shall not be applicable to shellfish.

History. Acts 1971, No. 367, §§ 1-3; 1973, No. 519, § 1; A.S.A. 1947, §§ 82-982 — 82-984.

SUBCHAPTER 2 — ARKANSAS CATFISH MARKETING ACT OF 1975

SECTION.

20-61-201. Title.

20-61-202. Definitions.

20-61-203. Penalties — Injunction.

20-61-204. Administration of subchapter by the Director of the Arkansas Bureau of Standards.

SECTION.

20-61-205. Rules and regulations.

20-61-206. Labeling.

20-61-207. Authority to enter into certain agreements.

20-61-208. Publication of data.

20-61-209. Judicial review.

Effective Dates. Acts 1987, No. 1005, § 11: Apr. 14, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that because of the case *Ricarte v. State*, CR 86-31, a question has arisen over the validity of Act 1209 of the Extended Session of 1976; that this Act is a reenactment of the former law; and that the immediate

passage of this Act is necessary to clarify the state of the law on this issue. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

20-61-201. Title.

This subchapter shall be known as the "Arkansas Catfish Marketing Act of 1975".

History. Acts 1975 (Extended Sess., 1976), No. 1209, § 1; A.S.A. 1947, § 82-987; reen. Acts 1987, No. 1005, § 1.

20-61-202. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Capable of use as human food" shall mean and shall apply to any catfish or part or product thereof unless it is denatured or otherwise identified as required by regulations prescribed by the Director of the Arkansas Bureau of Standards to deter its use as human food or unless it is naturally inedible by humans;

(2) "Catfish" means any species of the scientific order, Siluriformes, or family, Anarhichadidae;

(3) "Director" means the Director of the Arkansas Bureau of Standards;

(4) "Direct retail sale" means the sale of catfish products individually or in small quantities directly to the consumer;

(5) "Distributor" means any person offering for sale, exchange, or barter any catfish product destined for direct retail sale in Arkansas;

(6) "Label" means a display of written, printed, or graphic matter upon or affixed to the container in which a catfish product is offered for direct retail sale;

(7) "Labeling" means all labels and other written, printed, or graphic matter upon a catfish product, or any of its containers or wrappers, offered for direct retail sale;

(8) "Pay pond" means a circumscribed body of water owned by a person and operated solely for recreational fishing purposes on a commercial basis for profit;

(9) "Person" shall include any individual, partnership, corporation, and association or other legal entity;

(10) "Processor" means any person engaged in handling, storing, preparing, manufacturing, packing, or holding catfish products;

(11) "Producer" means any person engaged in the business of harvesting catfish, by any method, intended for direct retail sale;

(12) "Product" means any catfish product capable of use as human food which is made wholly or in part from any catfish or portion thereof, except products which contain catfish only in small proportions or which in the judgment of the director historically have not been considered by consumers as products of the commercial catfish industry and which are exempted from definition as a catfish product by the director under such conditions as he or she may prescribe to assure that the catfish or portions thereof contained therein are not adulterated and that the products are not represented as catfish products;

(13) "Product name" means the name of the catfish item intended for retail sale which identifies it as to kind, class, or specific use; and

(14) "Retailer" means any person offering for sale catfish products to individual consumers and representing the last sale prior to human consumption except that restaurants and other eating establishments are excluded.

History. Acts 1975 (Extended Sess., 1976), No. 1209, § 3; A.S.A. 1947, § 82-989; reen. Acts 1987, No. 1005, § 3.

Publisher's Notes. Acts 1993, Nos. 610 and 624, § 1, provided: "The Arkansas Bureau of Standards, created by Act

482 of 1963, as amended, the same being A.C.A. 4-18-201 et seq., and its functions, powers, duties, assets, properties, and appropriations are transferred by a type 2 transfer [see § 25-2-105] to the State Plant Board."

20-61-203. Penalties — Injunction.

(a) Any person who violates any provision of this subchapter for which no other civil penalty is provided by this subchapter shall upon conviction be subject to a fine of not more than five hundred dollars (\$500). However, no person shall be subject to penalties under this section for receiving for transportation any article in violation of this subchapter if the receipt was made in good faith unless the person refuses to furnish, on request of a representative of the Director of the Arkansas Bureau of Standards, the name and address of the person from whom he or she received the article and copies of all documents, if there are any, pertaining to the delivery of the article to him or her.

(b) Nothing in this subchapter shall be construed as requiring the director to report for prosecution or for the institution of libel or injunction proceedings any minor violations of this subchapter whenever he or she believes that the public interest will be adequately served by a suitable written notice of warning.

(c)(1) It shall be the duty of each prosecuting attorney to whom any violation is reported to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay.

(2) Before the director reports a violation for prosecution, an opportunity shall be given the distributor or other affected person to present his or her views to the director.

(d) The director is authorized to apply for and the court to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this subchapter or any rule or regulation promulgated under this subchapter, notwithstanding the existence of other remedies at law. The injunction shall be issued without bond.

History. Acts 1975 (Extended Sess., 1976), No. 1209, § 7; A.S.A. 1947, § 82-993; reen. Acts 1987, No. 1005, § 7.

20-61-204. Administration of subchapter by the Director of the Arkansas Bureau of Standards.

This subchapter shall be administered by the Director of the Arkansas Bureau of Standards.

History. Acts 1975 (Extended Sess., 1976), No. 1209, § 2; A.S.A. 1947, § 82-988; reen. Acts 1987, No. 1005, § 2.

Publisher's Notes. Acts 1993, Nos. 610 and 624, § 1, provided: "The Arkansas Bureau of Standards, created by Act

482 of 1963, as amended, the same being A.C.A. 4-18-201 et seq., and its functions, powers, duties, assets, properties, and appropriations are transferred by a type 2 transfer [see § 25-2-105] to the State Plant Board."

20-61-205. Rules and regulations.

(a) The Director of the Arkansas Bureau of Standards is authorized to promulgate such rules and regulations as may be necessary for the efficient enforcement of this subchapter.

(b)(1) Before the issuance, amendment, or repeal of any rule or regulation authorized by this subchapter, the director shall publish the proposed regulation, amendment, or notice to repeal an existing regulation in a manner reasonably calculated to give interested parties adequate notice and shall afford all interested persons an opportunity to present their views thereon, orally or in writing, within a reasonable period of time.

(2) After consideration of all views presented by interested persons, the director shall take appropriate action to issue the proposed rules or regulations or to amend or repeal an existing rule or regulation.

History. Acts 1975 (Extended Sess., 1976), No. 1209, § 6; A.S.A. 1947, § 82-992; reen. Acts 1987, No. 1005, § 6.

20-61-206. Labeling.

(a) No catfish product shall be offered for direct retail sale for human consumption by a processor, distributor, or retailer unless the catfish product name is specifically labeled in the following manner:

(1) "FARM-RAISED CATFISH", if the product has been specifically produced in fresh water according to the usual and customary techniques of commercial aquaculture;

(2) "RIVER OR LAKE CATFISH", if the product has been produced in any freshwater lake, river, or stream of the state but has not been produced according to the usual and customary techniques of commercial aquaculture;

(3) "IMPORTED CATFISH", provided the catfish is produced from freshwater, either according to the usual and customary techniques of aquaculture, or from freshwater lakes, rivers, or streams of a country other than the United States; and

(4) "OCEAN CATFISH", provided the catfish product is produced from marine or estuarine waters.

(b) Any person selling river or lake catfish exclusively and directly to the consumer may have on his or her premises a sign reasonably visible to the consumer which identifies the product as river or lake catfish, rather than labeling each individual container or package of catfish product, as provided in subsection (a) of this section.

(c) Any retailer selling catfish products not wrapped or in a container may comply with this subchapter by placing a sign on the display case or refrigeration unit so that the sign is reasonably visible to the consumer, giving notice that the catfish is either farm-raised catfish, river or lake catfish, imported catfish, or ocean catfish, as the products are defined in subsection (a) of this section.

(d) Any advertising as to any catfish product shall state whether the catfish product is farm-raised catfish, river or lake catfish, imported catfish, or ocean catfish, as defined in subsection (a) of this section.

(e) Subsections (a)-(d) of this section shall not apply to catfish products exported from the United States.

(f) All distributors, processors, or wholesalers of catfish products distributing or selling catfish products shall provide information to each person, firm, or corporation to whom they distribute or sell catfish products for resale as to whether the catfish product is farm-raised catfish, river or lake catfish, imported catfish, or ocean catfish, as these terms are defined in subsection (a) of this section.

History. Acts 1975 (Extended Sess., §§ 82-990, 82-991; reen. Acts 1987, No. 1976), No. 1209, §§ 4, 5; A.S.A. 1947, 1005, §§ 4, 5.

20-61-207. Authority to enter into certain agreements.

The Director of the Arkansas Bureau of Standards may cooperate with and enter into agreements with governmental agencies of this state, agencies of the federal government, and private associations in order to carry out the purpose and provisions of this subchapter.

History. Acts 1975 (Extended Sess., 1976), No. 1209, § 8; A.S.A. 1947, § 82-994; reen. Acts 1987, No. 1005, § 8.

20-61-208. Publication of data.

The Director of the Arkansas Bureau of Standards shall publish at least biannually, in such form as he or she may deem proper, information concerning the sale of catfish products, together with such data about their production and use as he or she may consider advisable, provided that the information concerning production and sales of catfish products shall not disclose the operation of any person.

History. Acts 1975 (Extended Sess., 1976), No. 1209, § 9; A.S.A. 1947, § 82-995; reen. Acts 1987, No. 1005, § 9.

20-61-209. Judicial review.

(a) Any person adversely affected by an act, order, or ruling made by the Director of the Arkansas Bureau of Standards pursuant to the provisions of this subchapter may, within forty-five (45) days thereafter, bring action in the Circuit Court of Pulaski County, Arkansas, for judicial review of the actions.

(b) The form of the proceeding shall be any which may be provided by statutes of this state to review decisions of administrative agencies or, in the absence or inadequacy thereof, any applicable form of legal action including actions for declaratory judgments or writs of prohibitory or mandatory injunctions.

History. Acts 1975 (Extended Sess., 1976), No. 1209, § 7; A.S.A. 1947, § 82-993; reen. Acts 1987, No. 1005, § 7.

SUBCHAPTER 3 — CATFISH — IDENTIFICATION BY RESTAURANTS

SECTION.

20-61-301. Penalty — Injunction.

20-61-302. Identification required.

20-61-303. Administration of subchapter by the Director of the Ar-

SECTION.

kansas Bureau of Standards.

20-61-304. Rules and regulations.

20-61-305. Judicial review.

Cross References. Food service establishments, § 20-57-201 et seq.

Effective Dates. Acts 1981, No. 77, § 7: Feb. 16, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that it is in the public interest that eating establishments which offer catfish to the public should indicate on the menu the type of catfish

offered, and that this Act is immediately necessary to so provide. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

20-61-301. Penalty — Injunction.

(a) Any person who knowingly and intentionally violates any provision of this subchapter for which no other civil penalty is provided by this subchapter shall upon conviction be subject to a fine of not more than fifty dollars (\$50.00) for the first offense and not more than five hundred dollars (\$500) for the second and subsequent offenses.

(b) Nothing in this subchapter shall be construed as requiring the Director of the Arkansas Bureau of Standards to report for prosecution or for the institution of libel or injunction proceedings any minor violations of this subchapter whenever he or she believes that the public interest will be adequately served by a suitable written notice of warning.

(c)(1) It shall be the duty of each prosecuting attorney to whom any violation is reported to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay.

(2) Before the director reports a violation for prosecution, an opportunity shall be given the affected person to present his or her views to the director.

(d) The director is authorized to apply for and the court is authorized to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this subchapter or any rule or regulation promulgated under this subchapter, notwithstanding the existence of other remedies at law. The injunction shall be issued without bond.

History. Acts 1981, No. 77, § 4; A.S.A. 1947, § 82-995.4.

20-61-302. Identification required.

(a) No catfish product shall be offered for direct retail sale for human consumption by a restaurant or other eating establishment unless the catfish product name is identified on the menu in the following manner:

(1) "FARM-RAISED CATFISH", if the product has been specifically produced in fresh water according to the usual and customary techniques of commercial aquaculture;

(2) "RIVER OR LAKE CATFISH", if the product has been produced in any freshwater lake, river, or stream of the state but has not been produced according to the usual and customary techniques of commercial aquaculture;

(3) "IMPORTED CATFISH", if the catfish product is produced from fresh water, either according to the usual and customary techniques of aquaculture, in or from freshwater lakes, rivers, or streams of a country other than the United States; and

(4) "OCEAN CATFISH", if the catfish product is produced from marine or estuarine waters.

(b)(1) Restaurants serving multiple entrees from multiple sources may make a general disclosure of sources upon the menu and shall not be required to disclose the source of each entree. The disclosure shall contain these words: "Upon request of the customer, the origin of each entree will be disclosed".

(2) Upon request of the customer, the specific source shall be disclosed.

History. Acts 1981, No. 77, § 1; A.S.A. 1947, § 82-995.1.

20-61-303. Administration of subchapter by the Director of the Arkansas Bureau of Standards.

This subchapter shall be administered and enforced by the Director of the Arkansas Bureau of Standards.

History. Acts 1981, No. 77, § 2; A.S.A. 1947, § 82-995.2.

Publisher's Notes. Acts 1993, Nos. 610 and 624, § 1, provided: "The Arkansas Bureau of Standards, created by Act 482 of 1963, as amended, the same being

A.C.A. 4-18-201 et seq., and its functions, powers, duties, assets, properties, and appropriations are transferred by a type 2 transfer [see § 25-2-105] to the State Plant Board."

20-61-304. Rules and regulations.

The Director of the Arkansas Bureau of Standards is authorized to promulgate such rules and regulations as may be necessary for the efficient enforcement of this subchapter.

History. Acts 1981, No. 77, § 3; A.S.A. 1947, § 82-995.3.

20-61-305. Judicial review.

(a) Any person adversely affected by an act, order, or ruling made by the Director of the Arkansas Bureau of Standards pursuant to the provisions of this subchapter may, within forty-five (45) days thereafter, bring action in the circuit court of the county wherein the violation occurred for judicial review of the action.

(b) The form of the proceeding shall be any which may be provided by statutes of this state to review decisions of administrative agencies or, in the absence or inadequacy thereof, any applicable form of legal action including actions for declaratory judgments or writs of prohibitory or mandatory injunctions.

History. Acts 1981, No. 77, § 4; A.S.A. 1947, § 82-995.4.

CHAPTER 62

POISONS

SECTION.

20-62-101. Labels on certain drugs required.

SECTION.

20-62-102. Sales of strychnine restricted.

Cross References. Emergency poison control, § 20-13-501 et seq.

Pesticide regulation, § 20-20-201 et seq.

Poison labeling requirements, § 17-92-411.

Records of poison sales, § 17-92-410.

Effective Dates. Acts 1899, No. 147, § 6: effective 30 days after passage.

RESEARCH REFERENCES

C.J.S. 72 C.J.S., Poisons, § 1 et seq.

20-62-101. Labels on certain drugs required.

(a) It shall be unlawful to sell at retail arsenic and its compounds, strychnine and its salts, corrosive sublimate, hydrocyanic acid, phosphorus, opium, morphine, laudanum, or any preparation of opium containing over two (2) grains to the ounce without the container being plainly labeled in English with the name of the article, the name of the seller, and the word "POISON".

(b) Any person who violates any of the provisions of this section shall upon conviction be sentenced to pay a fine of not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100) for each offense.

History. Acts 1899, No. 147, §§ 3, 4, p. Dig., §§ 10858, 10859; A.S.A. 1947, §§ 82-268; C. & M. Dig., §§ 8282c, 8282d; Pope's 942, 82-943.

20-62-102. Sales of strychnine restricted.

(a) It shall be unlawful for any person in the State of Arkansas to sell or give away or for any person to buy or accept a gift of any strychnine or its salts except upon prescription therefor of a licensed physician, dentist, or veterinarian, or where purchased for use by a licensed pest control operator.

(b)(1) Any person in this state selling or giving away any strychnine or its salts as authorized in subsection (a) of this section shall keep a record for not less than two (2) years, in a book provided for that purpose, of the date of the sale or gift, the quantity thereof, the name of the person making the sale or gift, and the signature and address of the person making the purchase or receiving the gift.

(2) If the purchaser is a person who is not known to the seller of any strychnine or its salts, the seller shall require such identification of the purchaser as may be necessary to determine the true name and address of the purchaser.

(c) Any person violating the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be fined in an amount not to exceed two hundred dollars (\$200) or imprisoned not more than thirty (30) days, or be both fined and imprisoned.

History. Acts 1959, No. 41, §§ 1, 2; A.S.A. 1947, §§ 82-955, 82-956.

CHAPTER 63

CONTRACEPTIVES

SECTION.

20-63-101 — 20-63-108. [Repealed.]

20-63-101 — 20-63-108. [Repealed.]

A.C.R.C. Notes. The December 31, 1985, consent order in *Doe v. State of Arkansas*, No. LR-C-85-775, in the U.S. District Court for the Eastern District of Arkansas, provided that “former §§ 20-63-102, 20-63-103(d) and (e), 20-63-105, and 20-63-107 (formerly A.S.A. §§ 92-944, 82-947, 82-950, and 82-952) were unconstitutional.

Publisher’s Notes. This chapter, concerning contraceptives, was repealed by Acts 1999, No. 105, §§ 18-25. The chapter was derived from the following sources:

20-63-101. Acts 1943, No. 189, § 10; A.S.A. 1947, § 82-953.

20-63-102. Acts 1943, No. 189, § 1; A.S.A. 1947, § 82-944.

20-63-103. Acts 1943, No. 189, §§ 2-4; A.S.A. 1947, §§ 82-945 — 82-947.

20-63-104. Acts 1943, No. 189, § 8; A.S.A. 1947, § 82-951; Acts 1991, No. 1180, § 1.

20-63-105. Acts 1943, No. 189, § 9; A.S.A. 1947, § 82-952.

20-63-106. Acts 1943, No. 189, § 5; A.S.A. 1947, § 82-948.

20-63-107. Acts 1943, No. 189, § 7; A.S.A. 1947, § 82-950.

20-63-108. Acts 1943, No. 189, §§ 6, 11; A.S.A. 1947, §§ 82-949, 82-954.

CHAPTER 64**ALCOHOL AND DRUG ABUSE****SUBCHAPTER.**

1. GENERAL PROVISIONS.
2. UNIFORM NARCOTIC DRUG ACT.
3. ARKANSAS DRUG ABUSE CONTROL ACT.
4. HALLUCINOGENIC DRUGS.
5. CONTROLLED SUBSTANCES AND LEGEND DRUGS.
6. ALCOHOL AND DRUG ABUSE PREVENTION GENERALLY.
7. ALCOHOLICS.
8. ALCOHOL OR DRUG ADDICTS.
9. ALCOHOL AND DRUG ABUSE TREATMENT PROGRAM LICENSING.
10. ALCOHOL AND DRUG ABUSE COORDINATING COUNCIL.

A.C.R.C. Notes. Acts 2001, No. 1655, §§ 1-3, provided: “WHEREAS, Arkansas has made significant progress in reducing social, health and safety problems linked to substance abuse, yet these problems continue to cause considerable human suffering, economic burdens and social problems; and

“WHEREAS, the youth of our state continue to be subjected at early ages to pressures from new drugs, new addicts and new distributors of illegal drugs; and

“WHEREAS, it is nationally recognized that the total cost to society of alcohol, tobacco and other addictive substances is over two billion dollars annually which exceeds the amount spent for all K-12 education programs; and

“WHEREAS, it is essential that drug abuse prevention and violence prevention

be continuously taught to all Arkansas youth,

“NOW THEREFORE, BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

“SECTION 1. There is hereby created the Arkansas Drug Abuse and Violence Prevention Task Force which shall be composed of eight (8) members to be selected as follows: One (1) representative of the Governor’s office, to be designated by the Governor; One (1) representative of the Department of Health, to be designated by the Director of the Department of Health; One (1) representative of the Department of Education, to be designated by the Director of the Department of Education; One (1) representative of the Department of Human Services, to be designated by the Director of the Department of Human Services; One (1) repre-

sentative of the Office of Attorney General, to be designated by the Attorney General; One (1) representative of the Arkansas Alcohol and Drug Abuse Coordinating Council, to be designated by the Council; One (1) member to be designated by the President Pro Tempore of the Senate; and One (1) member to be designated by the Speaker of the House of Representatives. The members of the Task Force shall serve without compensation.

"SECTION 2. The Arkansas Drug Abuse and Violence Prevention Task Force shall develop a model coordinated,

comprehensive and cumulative curriculum for teaching drug abuse prevention and violence prevention in grades K-12 in the public schools. The task force shall report its findings and recommendations to the Governor and the Legislative Council on or before March 1, 2002, and shall cease to exist on that date.

"SECTION 3. Necessary staff assistance to the task force shall be provided by one or more of the agencies represented on the task force, as may be agreed upon by the individuals designating members of the task force."

RESEARCH REFERENCES

ALR. Druggist's civil liability for injuries sustained as result of negligence in incorrectly filling drug prescriptions. 3 ALR 4th 270.

State and local administrative inspection of and administrative warrants to search pharmacies. 29 ALR 4th 264.

Liability of pharmacist who accurately fills prescription for harm resulting to user. 90 ALR 4th 12.

Liability of manufacturer or seller for injury or death allegedly caused by use of contraceptive. 54 ALR 5th 1.

Am. Jur. 25 Am. Jur. 2d, Drugs, § 17 et seq.

C.J.S. 28 C.J.S. Supp., Drugs, § 8 et seq.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

20-64-101. Use and possession of narcotic drugs by certain institutions and druggists.

20-64-102. Narcotic drugs in safe, locked receptacle.

SECTION.

20-64-103. [Repealed.]

20-64-104. Service of search warrant.

A.C.R.C. Notes. Acts 1995, No. 551, § 4, provided: "The Highway Safety Program Advisory Council Created by Arkansas Code 12-6-101 is transferred to the Arkansas Alcohol and Drug Abuse Coordinating Council pursuant to a type 3 transfer as defined in Arkansas Code 25-2-106."

Acts 1995, No. 551, § 5, provided: "The Arkansas Alcohol and Drug Abuse Authority of the Bureau of Alcohol and Drug Abuse Prevention, Arkansas Department of Health is transferred to the Arkansas Alcohol and Drug Abuse Coordinating Council pursuant to a type 3 transfer as defined in Arkansas Code 25-2-106."

Effective Dates. Acts 1923, No. 596, § 3: approved Mar. 22, 1923. Emergency

clause provided: "This act being necessary for the immediate preservation of the public health, peace and safety, an emergency is hereby declared to exist, and this act shall take effect and be in force from and after its passage."

Acts 1971, No. 265, § 3: Mar. 12, 1971. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present laws of this State relating to the issuance of search warrants relating to offenses involving drugs regulated under the Arkansas Uniform Narcotic Drug Act are totally inadequate and that it is essential to the peace and well-being of the citizens of this State that legislation be enacted immediately to per-

mit the issuance of search warrants relating to such offenses, by a judge of the circuit or municipal court at any time during the day or night, upon probable cause shown and that this Act is immediately necessary to provide such authority. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1981, No. 8, § 4: Jan. 30, 1981. Emergency clause provided: "It is hereby

found and determined by the General Assembly that THC is beneficial to the treatment of cancer patients and that to the extent it is lawfully available, that cancer patients should not be deprived its medical benefits and that this Act is immediately necessary to accomplish the same. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

20-64-101. Use and possession of narcotic drugs by certain institutions and druggists.

It shall be lawful for eleemosynary institutions, sanatoriums, hospitals, and wholesale druggists having licensed pharmacists in their employ to possess, use, compound, and sell narcotic drugs pursuant to the Federal Narcotic Act and the rules and regulations thereto appertaining.

History. Acts 1923, No. 596, § 1; Pope's Dig., § 4623; A.S.A. 1947, § 82-1024.

U.S. Code. The Federal Narcotic Act

was codified in the 1939 Internal Revenue Code, which has been completely revised. See now 18 U.S.C. § 371, 21 U.S.C. § 842 and 26 U.S.C. §§ 4701, 4771 and 6302(b).

20-64-102. Narcotic drugs in safe, locked receptacle.

(a) Any apothecary who is authorized to possess narcotic drugs as defined by the Uniform Narcotic Drug Act, § 20-64-201 et seq., shall keep the narcotic drugs in a safe, or other receptacle equipped with a lock, sufficient to secure the narcotic drugs against theft.

(b) Any person who violates this section shall be punished as provided by § 20-64-220.

History. Acts 1961, No. 419, §§ 1, 2; A.S.A. 1947, §§ 82-1025, 82-1026.

CASE NOTES

Cited: Arkansas State Medical Bd. v. Grimmett, 250 Ark. 1, 463 S.W.2d 662 (1971).

20-64-103. [Repealed.]

Publisher's Notes. This section, concerning professional use of THC for cancer patients, was repealed by Acts 1989, No.

52, § 2. The section was derived from Acts 1981, No. 8, §§ 1, 2; A.S.A. 1947, §§ 82-1007.1, 82-1007.2.

20-64-104. Service of search warrant.

A search warrant relating to offenses involving drugs regulated under the Uniform Narcotic Drug Act, § 20-64-201 et seq., and the Arkansas Drug Abuse Control Act, § 20-64-301 et seq., may be served at any time of the day or night if the judge of the municipal or circuit court issuing the warrant is satisfied that there is probable cause to believe that grounds exist for the warrant and for its service at that time.

History. Acts 1971, No. 265, § 1;
A.S.A. 1947, § 82-1068.

SUBCHAPTER 2 — UNIFORM NARCOTIC DRUG ACT

SECTION.

- 20-64-201. Definitions.
- 20-64-202. Acts prohibited.
- 20-64-203. Manufacturers and wholesalers.
- 20-64-204. Qualification for licenses.
- 20-64-205. Sale on written orders.
- 20-64-206. Sales by apothecaries.
- 20-64-207. Professional use of narcotic drugs.
- 20-64-208. Preparations exempted.
- 20-64-209. Records to be kept.
- 20-64-210. Labels.
- 20-64-211. Authorized possession of narcotic drugs by individuals.
- 20-64-212. Persons and corporations exempted.
- 20-64-213. Common nuisances.
- 20-64-214. Narcotic drugs to be delivered

SECTION.

- to state official, etc.
- 20-64-215. Notice of conviction to be sent to licensing board.
- 20-64-216. Records confidential.
- 20-64-217. Fraud or deceit.
- 20-64-218. Exceptions and exemptions not required to be negatived.
- 20-64-219. Enforcement and cooperation.
- 20-64-220. Penalties.
- 20-64-221. Effect of acquittal or conviction under federal narcotic laws.
- 20-64-222. Constitutionality.
- 20-64-223. Interpretation.
- 20-64-224. Inconsistent laws repealed.
- 20-64-225. Name of act.
- 20-64-226. [Reserved.]

Publisher's Notes. For Comments regarding the Uniform Narcotic Drug Act, see Commentaries Volume B.

Preambles. Acts 1941, No. 324 contained a preamble which read: "Whereas, the supply of opium and coca leaves in the United States is imported and the present world crisis is making the securing of these products increasingly difficult, and,

"Whereas, because of the importance of these products to this Nation in times of national peril, the National Conference of Commissioners on Uniform State Laws, the American Bar Association and the Bureau of Narcotics have requested passage of the following Act, and,

"Whereas, the General Assembly, desiring to cooperate fully in the present national defense program, the above recommendations are accepted...."

Effective Dates. Acts 1941, No. 324, § 8: approved Mar. 26, 1941. Emergency clause provided: "Because of the importance of conserving certain important drugs necessary to the health of the nation, this act is found to be necessary for the preservation of the public peace, health and safety, an emergency is declared to exist and this act shall be in full force and effect from and after its passage."

Acts 1955, No. 155, § 6: Mar. 8, 1955. Emergency clause provided: "Because of the importance of conserving important drugs necessary to the health of the nation, and because of the necessity of preventing indiscriminate preparation, distribution, and use of many newly discovered synthetic compounds neither chemically nor physically distinguishable

from narcotic drugs, and in order to benefit from the recent Federal amendment of the Harrison Narcotics Act (the Codeine Act), it has been found and is declared by the General Assembly of Arkansas that there is urgent need for the preceding amendments to the Arkansas Uniform Narcotics Act. Therefore an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety, shall take effect and be in force from the date of its approval."

Acts 1963, No. 113, § 3: Feb. 28, 1963. Emergency clause provided: "It has been found and declared by the General Assembly that the punishment of certain of-

fenses involving non-prescription drugs under Act 344, Ark. Acts of 1937, as amended, as felonies is unnecessarily harsh and results in extreme difficulty in enforcement; that the aforesaid offenses should be punished as misdemeanors; that there is an urgent need to alter the existing situation; and that enactment of this measure will provide the needed remedy. Therefore, an emergency is declared to exist, and this act, being necessary for the preservation of the public peace, health, and safety, shall take effect and be in force from the date of its approval."

Acts 1975, No. 928, § 1: effective simultaneously with the Arkansas Criminal Code on Jan. 1, 1976.

RESEARCH REFERENCES

Am. Jur. 25 Am. Jur. 2d, Drugs, § 18 et seq.

Ark. L. Rev. The Arkansas Uniform Narcotics Act, 9 Ark. L. Rev. 406.

Marijuana Laws: A Need for Reform, 22 Ark. L. Rev. 359.

C.J.S. 28 C.J.S., Drugs Supp., § 117.

CASE NOTES

Cited: Pope v. State, 216 Ark. 314, 225 S.W.2d 8 (1949); Crutchfield v. State, 251 Ark. 137, 471 S.W.2d 361 (1971); Hosto v.

Brickell, 265 Ark. 147, 577 S.W.2d 401 (1979).

20-64-201. Definitions.

The following words and phrases, as used in this subchapter, shall have the following meanings, unless the context otherwise requires:

(1) "Apothecary" means a licensed pharmacist as defined by the laws of this state and, where the context so requires, the owner of a store or other place of business where narcotic drugs are compounded or dispensed by a licensed pharmacist; but nothing in this subchapter shall be construed as conferring on a person who is not registered nor licensed as a pharmacist any authority, right, or privilege that is not granted to him by the pharmacy laws of this state;

(2) "Dentist" means a person authorized by law to practice dentistry in this state;

(3) "Dispense" includes distribute, leave with, give away, dispose of, or deliver;

(4) "Federal narcotic laws" means the laws of the United States relating to opium, coca leaves, and other narcotic drugs;

(5) "Hospital" means an institution for the care and treatment of the sick and injured, approved by the Director of the Department of Health as proper to be entrusted with the custody of narcotic drugs and the

professional use of narcotic drugs under the direction of a physician, dentist, or veterinarian;

(6) "Laboratory" means a laboratory approved by the Director of the Department of Health as proper to be entrusted with the custody of narcotic drugs and the use of narcotic drugs for scientific and medical purposes and for purposes of instruction;

(7) "Manufacturer" means a person who, by compounding, mixing, cultivating, growing, or other process, produces or prepares narcotic drugs, but does not include an apothecary who compounds narcotic drugs to be sold or dispensed on prescriptions;

(8)(A) "Narcotic drug" means any drug which is defined as a narcotic drug by order of the Director of the Department of Health. In the formulation of definitions of narcotic drugs, the Director of the Department of Health is directed to include all drugs which he finds are narcotic in character and by reason thereof are dangerous to the public health or are promotive of addiction-forming or addiction-sustaining results upon the user which threaten harm to the public health, safety, or morals. In formulating these definitions, the Director of the Department of Health shall take into consideration the provisions of the federal narcotic laws as they exist, from time to time, and shall amend the definitions so as to keep them in harmony with the definitions prescribed by the federal narcotic laws, so far as is possible under the standards established in this subdivision, and under the policy of this subchapter.

(B) "Narcotic drug" also means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(i) Opium, opiates, derivatives of opium and opiates, including their isomers, esters, and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation. This term does not include the isoquinoline alkaloids of opium;

(ii) Poppy straw and concentrate of poppy straw;

(iii) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

(iv) Cocaine, its salts, optical and geometric isomers, and salts of isomers;

(v) Ecgonine, its derivatives, their salts, isomers, and salts of isomers;

(vi) Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subdivisions (8)(B)(i)-(v) of this section.

(9) "Official written order" means an order written on a form provided for that purpose by the United States Director of the Drug Enforcement Administration under any laws of the United States making provision therefor, if such order forms are authorized and

required by federal law and, if no such order form is provided, then on an official form provided for that purpose by the Director of the Department of Health;

(10) "Person" includes any corporation, association, copartnership, or one (1) or more individuals;

(11) "Physician" means a person authorized by law to practice medicine in this state and any other person authorized by law to treat sick and injured human beings in this state and to use narcotic drugs in connection with such treatment;

(12) "Registry number" means the number assigned to each person registered under the federal narcotic laws;

(13) "Sale" includes barter, exchange, or gift, or offer therefor, and each such transaction made by any person, whether as principal, proprietor, agent, servant, or employee;

(14) "Veterinarian" means a person authorized by law to practice veterinary medicine in this state; and

(15) "Wholesaler" means a person who supplies narcotic drugs that he himself has not produced nor prepared, on official written orders, but not on prescriptions.

History. Acts 1937, No. 344, § 1; No. 250, § 1; 1965, No. 409, § 1; A.S.A. Pope's Dig., §§ 4615, 10126; Acts 1941, 1947, § 82-1001; Acts 1987, No. 42, § 1. No. 324, §§ 1, 2; 1955, No. 155, § 1; 1959,

CASE NOTES

ANALYSIS

Cannabis.
Narcotic drugs.

Cannabis.

Where court had been given instruction that state was required to prove beyond a reasonable doubt that the defendant possessed parts of the plant, other than non-narcotic parts described in this section, it was not error for the trial court to refuse a requested instruction that only portions of the plant cannabis sativa are classified as

a narcotic drug. *Peters v. State*, 248 Ark. 134, 450 S.W.2d 276 (1970).

Narcotic Drugs.

In a prosecution for illegal possession of narcotics, in which evidence showed the defendant to have possessed marijuana, it was not error to exclude testimony of a physician that marijuana is not a narcotic. *Brown v. State*, 248 Ark. 561, 453 S.W.2d 50 (1970).

Cited: *Hales v. State*, 299 Ark. 93, 771 S.W.2d 285 (1989).

20-64-202. Acts prohibited.

It shall be unlawful for any person to manufacture, purchase, possess, have under his control, sell, prescribe, administer, dispense, or compound any narcotic drug, except as authorized in this subchapter.

History. Acts 1937, No. 344, § 2; Pope's Dig., § 10127; Acts 1965, No. 409, § 2; A.S.A 1947, § 82-1002.

CASE NOTES

Possession.

Mere possession of the narcotics, with certain exceptions, was unlawful, although the possession was not for the purpose of sale, barter or exchange. *Starr v. State*, 165 Ark. 511, 265 S.W. 54 (1924) (decision under prior law).

Cited: *Perez v. State*, 249 Ark. 1111, 463 S.W.2d 394 (1971); *Hosto v. Brickell*, 265 Ark. 147, 577 S.W.2d 401 (1979); *Hales v. State*, 299 Ark. 93, 771 S.W.2d 285 (1989).

20-64-203. Manufacturers and wholesalers.

No person shall manufacture, compound, mix, cultivate, grow, or by any other process produce or prepare narcotic drugs, and no person as a wholesaler shall supply the same, without having first obtained a license so to do from the Director of the Department of Health.

History. Acts 1937, No. 344, § 3; Pope's Dig., § 10128; A.S.A. 1947, § 82-1003.

20-64-204. Qualification for licenses.

No license shall be issued under § 20-64-203 unless and until the applicant therefor has furnished proof satisfactory to the Director of the Department of Health:

(a) That the applicant is of good moral character or, if the applicant be an association or corporation, that the managing officers are of good moral character;

(b) That the applicant is equipped as to land, buildings, and paraphernalia properly to carry on the business described in his application.

No license shall be granted to any person who has within five (5) years been convicted of a willful violation of any law of the United States, or of any state, relating to opium, coca leaves, or other narcotic drugs, or to any person who is a narcotic drug addict.

The Director of the Department of Health may suspend or revoke any license for cause.

History. Acts 1937, No. 344, § 4; Pope's Dig., § 10129; A.S.A. 1947, § 82-1004.

20-64-205. Sale on written orders.

(1) A duly licensed manufacturer or wholesaler may sell and dispense narcotic drugs to any of the following persons, but only on official written orders:

(a) To a manufacturer, wholesaler, or apothecary;

(b) To a physician, dentist, or veterinarian;

(c) To a person in charge of a hospital, but only for use by or in that hospital;

(d) To a person in charge of a laboratory, but only for use in that laboratory for scientific and medical purposes.

(2) A duly licensed manufacturer or wholesaler may sell narcotic drugs to any of the following persons:

(a) On a special written order accompanied by a certificate of exemption, as required by the federal narcotic laws, to a person in the employ of the United States Government or of any state, territorial, district, county, municipal, or insular government, purchasing, receiving, possessing, or dispensing narcotic drugs by reason of his official duties;

(b) To a master of a ship or a person in charge of any aircraft upon which no physician is regularly employed, or to a physician or surgeon duly licensed in some state, territory, or the District of Columbia, to practice his profession, or to a retired commissioned medical officer of the United States Army, Navy, or Public Health Service employed upon such ship or aircraft, for the actual medical needs of persons on board of such ship or aircraft, when not in port. Provided: Such narcotic drugs shall be sold to the master of such ship or person in charge of such aircraft or to a physician, surgeon, or retired commissioned medical officer of the United States Army, Navy, or Public Health Service employed upon such ship or aircraft only in pursuance of a special order form approved by a commissioned medical officer or acting assistant surgeon of the United States Public Health Service;

(c) To a person in a foreign country if the provisions of the federal narcotic laws are complied with.

(3) **USE OF OFFICIAL WRITTEN ORDERS.** An official written order for any narcotic drug shall be signed in quadruplicate by the person giving said order or his duly authorized agent. The original shall be presented to the person who sells or dispenses the narcotic drug or drugs named therein, and one (1) copy shall be sent to the Director of the Department of Health not later than the 10th of the month following the month during which the order was made. In event of the acceptance of such order by said person, each party to the transaction shall preserve his copy of such order for a period of two (2) years in such a way as to be readily accessible for inspection by any public officer or employee engaged in the enforcement of this subchapter. It shall be deemed a compliance with this subsection if the parties to the transaction have complied with the federal narcotic laws, respecting the requirements governing the use of order forms, and the purchaser has sent a signed copy of the order to the Director of the Department of Health as aforesaid.

(4) **POSSESSION LAWFUL.** Possession of or control of narcotic drugs obtained as authorized by this section shall be lawful if in the regular course of business, occupation, profession, employment, or duty of the possessor.

(5) A person in charge of a hospital or of a laboratory, or in the employ of this state or of any other state, or of any political subdivisions thereof, or a master of a ship or a person in charge of any aircraft upon

which no physician is regularly employed, or a physician or surgeon duly licensed in some state, territory, or the District of Columbia, to practice his profession, or a retired commissioned medical officer of the United States Army, Navy, or Public Health Service employed upon such ship or aircraft who obtains narcotic drugs under the provisions of this section or otherwise, shall not administer nor dispense nor otherwise use such drugs, within this state, except within the scope of his employment or official duty, and then only for scientific or medicinal purposes and subject to the provisions of this subchapter.

History. Acts 1937, No. 344, § 5; §§ 3, 4; 1961, No. 417, § 1; A.S.A. 1947, Pope's Dig., § 10130; Acts 1941, No. 324, § 82-1005.

CASE NOTES

Cited: Arkansas State Medical Bd. v. Grimmett, 250 Ark. 1, 463 S.W.2d 662 (1971).

20-64-206. Sales by apothecaries.

(1) An apothecary, in good faith, may sell and dispense narcotic drugs to any person upon a written prescription or an oral prescription in pursuance to regulations, promulgated by the Director of the Department of Health under authority of § 20-64-219, of a physician, dentist, or veterinarian, dated and signed by the person prescribing on the day when issued and bearing the full name and address of the patient for whom, or the owner of the animal for which, the drug is dispensed, and the full name, address, and registry number under the federal narcotic laws of the person prescribing. If the prescription is for an animal, it shall state the species of animal for which the drug is prescribed. The person filling the prescription shall write the date of filling and his own signature on the face of the prescription. The prescription shall be retained on file by the proprietor of the pharmacy in which it is filled for a period of two (2) years, so as to be readily accessible for inspection by any public officer or employee engaged in the enforcement of this subchapter. The prescription must not be refilled.

(2) The legal owner of any stock of narcotic drugs in a pharmacy, upon discontinuance of dealing in said drugs, may sell said stock to a manufacturer, wholesaler, or apothecary, but only on an official written order.

(3) An apothecary, only upon an official written order, may sell to a physician, dentist, or veterinarian, in quantities not exceeding one (1) ounce at any one time, aqueous or oleaginous solutions of which the content of narcotic drugs does not exceed a proportion greater than twenty percent (20%) of the complete solution, to be used for medical purposes.

History. Acts 1937, No. 344, § 6; No. 155, § 2; 1965, No. 409, § 3; A.S.A. Pope's Dig., §§ 4616, 10131; Acts 1955, 1947, § 82-1006.

RESEARCH REFERENCES

Ark. L. Rev. Legal Control of Business in Arkansas, 5 Ark. L. Rev. 137.

CASE NOTES

Cited: *Hosto v. Brickell*, 265 Ark. 147, 577 S.W.2d 401 (1979).

20-64-207. Professional use of narcotic drugs.

(1) **PHYSICIANS AND DENTISTS.** A physician or a dentist, in good faith and in the course of his professional practice only, may prescribe, administer, and dispense narcotic drugs, or he may cause the same to be administered by a nurse or intern under his direction and supervision.

(2) **VETERINARIANS.** A veterinarian, in good faith and in the course of his professional practice only, and not for use by a human being, may prescribe, administer, and dispense narcotic drugs, and he may cause them to be administered by an assistant or orderly under his direction and supervision.

(3) **RETURN OF UNUSED DRUGS.** Any person who has obtained from a physician, dentist, or veterinarian any narcotic drug for administration to a patient during the absence of such physician, dentist, or veterinarian, shall return to such physician, dentist, or veterinarian any unused portion of such drug, when it is no longer required by the patient.

History. Acts 1937, No. 344, § 7; Pope's Dig., § 10132; A.S.A. 1947, § 82-1007.

CASE NOTES

Cited: *Hales v. State*, 299 Ark. 93, 771 S.W.2d 285 (1989).

20-64-208. Preparations exempted.

(a) Except as otherwise in this subchapter specifically provided, this subchapter shall not apply to the following cases:

(1) Administering, dispensing, or selling at retail any drug subject to this subchapter under any circumstances that the Director of the Department of Health determines, after reasonable notice and opportunity for hearing, not to be dangerous to the public health, or promotive of addiction-forming or addiction-sustaining results upon the user, or harmful to the public health, safety, or morals, and by order so proclaims. In arriving at his determination, the Director of the Department of Health shall consult with the Drug Enforcement Administra-

tion of the Treasury Department of the United States and give due weight to its investigations and determinations;

(2) Administering, dispensing, or selling at retail any medicinal preparation that contains in one (1) fluid ounce, or if a solid or semisolid preparation, in one (1) avoirdupois ounce, not more than one (1) grain of codeine or of any of its salts. The exemptions authorized by this subdivision are subject to the following conditions:

(A) That the medicinal preparation administered, dispensed, or sold contains, in addition to the narcotic drug in it, some drug or drugs conferring upon it medicinal qualities other than those possessed by the narcotic drug alone; and

(B) That the preparation is administered, dispensed, purchased, and sold in good faith as a medicine and not for the purpose of evading the provisions of this subchapter.

(b) Nothing in this section shall limit the quantity of codeine or of any of its salts that may be prescribed, administered, dispensed, or sold to any person or for the use of any person or animal, when it is prescribed, administered, dispensed, or sold, in compliance with the general provisions of this subchapter.

History. Acts 1937, No. 344, § 8; Pope's Dig., § 10133; Acts 1941, No. 324, § 5; 1955, No. 155, § 3; 1959, No. 250, § 2; 1965, No. 409, § 4; A.S.A. 1947, § 82-1008.

Publisher's Notes. As originally en-

acted this section referred to the Bureau of Narcotics. However, Reorg. Plan No. 2 of 1973, eff. July 1, 1973, 38 Fed. Reg. 15932, 87 Stat. 1091, transferred the duties to the Drug Enforcement Administration.

20-64-209. Records to be kept.

(1) **PHYSICIANS, DENTISTS, VETERINARIANS, AND OTHER AUTHORIZED PERSONS.** Every physician, dentist, veterinarian, or other person who is authorized to administer or professionally use narcotic drugs shall keep a record of such drugs received by him, and a record of all such drugs administered, dispensed, or professionally used by him otherwise than by prescription. It shall, however, be deemed a sufficient compliance with this subdivision if any such person using small quantities of solutions or other preparation of such drugs for local application shall keep a record of the quantity, character, and potency of such solution or other preparations purchased or made up by him, and of the dates when purchased or made up, without keeping record of the amount of such solution or other preparation applied by him to individual patients.

(2) **MANUFACTURERS AND WHOLESALERS.** Manufacturers and wholesalers shall keep records of all narcotic drugs compounded, mixed, cultivated, grown, or by any other process produced or prepared, and of all narcotic drugs received and disposed of by them, in accordance with the provisions of subdivision (5) of this section.

(3) **APOTHECARIES.** Apothecaries shall keep records of all narcotic drugs received and disposed of by them, in accordance with the provisions of subdivision (5) of this section.

(4) **VENDORS OF EXEMPTED PREPARATIONS.** Every person who purchases for resale, or who sells narcotic drug preparations exempted by § 20-64-208, shall keep a record showing the quantities and kinds thereof received and sold, or disposed of otherwise, in accordance with the provisions of subdivision (5) of this section.

(5) **FORM AND PRESERVATION OF RECORDS.** The form of records shall be prescribed by the Director of the Department of Health. The record of narcotic drugs received shall in every case show the date of receipt, the name and address of the person from whom received, and the kind and quantity of drugs received; the kind and quantity of narcotic drugs produced or removed from process of manufacturer, and the date of such production or removal from process of manufacturer; and the record shall in every case show the proportion of morphine, cocaine, or ecgonine contained in or producible from crude opium or coca leaves received or produced. The record of all narcotic drugs sold, administered, dispensed, or otherwise disposed of shall show the date of selling, administering, or dispensing, the name and address of the person to whom, or for whose use, or the owner and species of animal for which the drugs were sold, administered, or dispensed, and the kind and quantity of drugs. Every such record shall be kept for a period of two (2) years from the date of the transaction recorded. The keeping of a record required by or under the federal narcotic laws, containing substantially the same information as is specified above, shall constitute compliance with this section, except that every such record shall contain a detailed list of narcotic drugs lost, destroyed, or stolen, if any, the kind and quantity of such drugs, and the date of the discovery of such loss, destruction, or theft.

(6) **RECORDS OF PURCHASERS FOR RESALE.** Every person who purchases cannabis for resale should keep a record of its date of receipt, name and address of the person for whom received, and the proportion of resin contained in or producible from the plant *cannabis sativa* L., received or produced.

History. Acts 1937, No. 344, § 9; § 6; 1965, No. 409, § 5; A.S.A. 1947, § 82-Pope's Dig., § 10134; Acts 1941, No. 324, 1009.

CASE NOTES

Evidence.

Testimony of an employee of the State Board of Health, was sufficient, in the absence of the production of the required record by physician, to sustain a finding of

violation of this section. *Arkansas State Medical Bd. v. Grimmatt*, 250 Ark. 1, 463 S.W.2d 662 (1971).

Cited: *Hosto v. Brickell*, 265 Ark. 147, 577 S.W.2d 401 (1979).

20-64-210. Labels.

(1) Whenever a manufacturer sells or dispenses a narcotic drug, and whenever a wholesaler sells or dispenses a narcotic drug in a package prepared by him, he shall securely affix to each package in which that drug is contained a label showing in legible English the name and

address of the vendor and the quantity, kind, and form of narcotic drug contained therein. No person, except an apothecary for the purpose of filling a prescription under this subchapter, shall alter, deface, or remove any label so affixed.

(2) Whenever an apothecary sells or dispenses any narcotic drug on a prescription issued by a physician, dentist, or veterinarian, he shall affix to the container in which such drug is sold or dispensed, a label showing his own name, address, and registry number, or the name, address, and registry number of the apothecary for whom he is lawfully acting; the name and address of the patient or, if the patient is an animal, the name and address of the owner of the animal and the species of the animal; the name, address, and registry number of the physician, dentist, or veterinarian by whom the prescription was written; and such directions as may be stated on the prescription. No person shall alter, deface, or remove any label so affixed.

History. Acts 1937, No. 344, § 10;
Pope's Dig., § 10135; A.S.A. 1947, § 82-1010.

20-64-211. Authorized possession of narcotic drugs by individuals.

A person to whom or for whose use any narcotic drug has been prescribed, sold, or dispensed by a physician, dentist, apothecary, or other person authorized under the provisions of § 20-64-205, and the owner of any animal for which any such drug has been prescribed, sold, or dispensed, by a veterinarian, may lawfully possess it only in the container in which it was delivered to him by the person selling or dispensing the same.

History. Acts 1937, No. 344, § 11;
Pope's Dig., § 10136; A.S.A. 1947, § 82-1011.

20-64-212. Persons and corporations exempted.

The provisions of this subchapter restricting the possession and having control of narcotic drugs shall not apply to common carriers or to warehousemen, while engaged in lawfully transporting or storing such drugs, or to any employee of the same acting within the scope of his employment; or to public officers or their employees in the performance of their official duties requiring possession or control of narcotic drugs; or to temporary incidental possession by employees or agents of persons lawfully entitled to possession, or by persons whose possession is for the purpose of aiding public officers in performing their official duties.

History. Acts 1937, No. 344, § 12;
Pope's Dig., § 10137; A.S.A. 1947, § 82-1012.

20-64-213. Common nuisances.

Any store, shop, warehouse, dwelling house, building, vehicle, boat, aircraft, or any place whatever, which is resorted to by narcotic drug addicts for the purpose of using narcotic drugs or which is used for the illegal keeping or selling of the same, shall be deemed a common nuisance. No person shall keep or maintain such a common nuisance.

History. Acts 1937, No. 344, § 13; Pope's Dig., § 10138; A.S.A. 1947, § 82-1013.

20-64-214. Narcotic drugs to be delivered to state official, etc.

Upon delivery to the Director of the Department of Health of any narcotic drugs discarded by the owner thereof or other person entitled to the possession or custody thereof, and upon the Director of the Department of Health delivering to such person an itemized receipt therefor, the Director of the Department of Health is empowered to destroy such narcotic drugs; provided, that the Director of the Department of Health shall keep for a period of three (3) years from the date of destruction a record of such transaction, showing the name and address of the person delivering the narcotic drugs, an itemized description thereof, the date and place of delivery, and the date of destruction.

All narcotic drugs, the lawful possession of which is not established or the title to which cannot be ascertained, which have come into the custody of a peace officer, shall be forfeited, and disposed of as follows:

(a) Except as in this section otherwise provided, the court or magistrate having jurisdiction shall order such narcotic drugs forfeited and destroyed. A record of the place where said drugs were seized, of the kinds and quantities of drugs so destroyed, and of the time, place, and manner of destruction shall be kept, and a return under oath, reporting said destruction, shall be made to the court or magistrate and to the United States Director of the Drug Enforcement Administration by the officer who destroys them;

(b) Upon written application by the Director of the Department of Health, the court or magistrate by whom the forfeiture of narcotic drugs has been decreed may order the delivery of any of them except heroin and its salts and derivatives, to said Director of the Department of Health, for distribution or destruction, as hereinafter provided;

(c) Upon application by any hospital within this state not operated for private gain, the Director of the Department of Health may in his discretion deliver any narcotic drugs that have come into his custody by authority of this section to the applicant for medicinal use. The Director of the Department of Health may from time to time deliver excess stocks of such narcotic drugs to the United States Director of the Drug Enforcement Administration or may destroy the same;

(d) The Director of the Department of Health shall keep a full and complete record of all drugs received and of all drugs disposed of,

showing the exact kinds, quantities, and forms of such drugs; the persons from whom received and to whom delivered; by whose authority received, delivered, and destroyed; and the dates of the receipt, disposal, or destruction, which record shall be open to inspection by all federal and state officers charged with the enforcement of federal and state narcotic laws.

History. Acts 1937, No. 344, § 14; Pope's Dig., § 10139; Acts 1961, No. 416, § 1; A.S.A. 1947, § 82-1014.

20-64-215. Notice of conviction to be sent to licensing board.

On the conviction of any person of the violation of any provision of this subchapter, a copy of the judgment and sentence, and of the opinion of the court or magistrate, if any opinion be filed, shall be sent by the clerk of the court, or by the magistrate, to the board or officer, if any, by whom the convicted defendant has been licensed or registered to practice his profession or to carry on his business. On the conviction of any such person, the court may, in its discretion, suspend or revoke the license or registration of the convicted defendant to practice his profession or to carry on his business. On the application of any person whose license or registration has been suspended or revoked, and upon proper showing and for good cause, said board or officer may reinstate such license or registration.

History. Acts 1937, No. 344, § 15; Pope's Dig., §§ 4617, 10140; A.S.A. 1947, § 82-1015.

20-64-216. Records confidential.

Prescriptions, orders, and records, required by this subchapter, and stocks of narcotic drugs, shall be open for inspection only to federal, state, county, and municipal officers, whose duty it is to enforce the laws of this state or of the United States relating to narcotic drugs. No officer having knowledge by virtue of his office of any such prescription, order, or record shall divulge such knowledge, except in connection with a prosecution or proceeding in court or before a licensing or registration board or officer, to which prosecution or proceeding the person to whom such prescriptions, orders, or records relate is a party.

History. Acts 1937, No. 344, § 16; Pope's Dig., § 10141; A.S.A. 1947, § 82-1016.

20-64-217. Fraud or deceit.

(1) No person shall obtain or attempt to obtain a narcotic drug, or procure or attempt to procure the administration of a narcotic drug:

(a) by fraud, deceit, misrepresentation, or subterfuge; or

(b) by the forgery or alteration of a prescription or of any written order; or

(c) by the concealment of a material fact; or

(d) by the use of a false name or the giving of a false address.

(2) Information communicated to a physician in an effort unlawfully to procure a narcotic drug, or unlawfully to procure the administration of any such drug, shall not be deemed a privileged communication.

(3) No person shall willfully make a false statement in any prescription, order, report, or record, required by this subchapter.

(4) No person shall, for the purpose of obtaining a narcotic drug, falsely assume the title of, or represent himself to be, a manufacturer, wholesaler, apothecary, physician, dentist, veterinarian, or other authorized person.

(5) No person shall make or utter any false or forged prescription or false or forged written order.

(6) No person shall affix any false or forged label to a package or receptacle containing narcotic drugs.

(7) The provisions of this section shall apply to all transactions relating to narcotic drugs under the provisions of § 20-64-208, in the same way as they apply to transactions under all other sections.

History. Acts 1937, No. 344, § 17;
Pope's Dig., § 10142; A.S.A. 1947, § 82-1017.

CASE NOTES

Cited: *Diffie v. State*, 290 Ark. 194, 718 S.W.2d 94 (1986).

20-64-218. Exceptions and exemptions not required to be negatived.

In any complaint, information, or indictment, and in any action or proceeding brought for the enforcement of any provision of this subchapter, it shall not be necessary to negative any exception, excuse, proviso, or exemption contained in this subchapter, and the burden of proof of any such exception, excuse, proviso, or exemption shall be upon the defendant.

History. Acts 1937, No. 344, § 18;
Pope's Dig., § 10143; A.S.A. 1947, § 82-1018.

20-64-219. Enforcement and cooperation.

It is hereby made the duty of the Director of the Department of Health, his officers, agents, inspectors, and representatives, and of all peace officers within the state, and of all prosecuting attorneys, to enforce all provisions of this subchapter, except those specifically designated, and to cooperate with all agencies charged with the

enforcement of the laws of the United States, of this state, and of all other states, relating to narcotic drugs.

The authority to promulgate regulations for the efficient enforcement of this act is hereby vested in the Director of the Department of Health. The Director of the Department of Health is hereby authorized to make the regulations promulgated under this subchapter conform insofar as possible under the standards established herein and under the policies of this subchapter with those regulations promulgated under the federal Narcotic Act.

History. Acts 1937, No. 344, § 19; Pope's Dig., § 10144; Acts 1955, No. 155, § 4; 1965, No. 409, § 6; A.S.A. 1947, § 82-1019.

was codified in the 1939 Internal Revenue Code which has been completely revised. See now 18 U.S.C. § 371, 21 U.S.C. § 842 and 26 U.S.C. §§ 4701, 4771 and 6302(b).

U.S. Code. The federal Narcotic Act

20-64-220. Penalties.

(1) Except as provided in subsection (2) of this section, a person violating any provision of this subchapter commits a felony and upon conviction shall be fined not more than two thousand dollars (\$2,000), and be imprisoned in the state penitentiary not less than two (2) nor more than five (5) years. For a second offense, or if, in case of a first conviction of violation of any provision of this subchapter, the offender shall previously have been convicted of any violation of the laws of the United States or of any other state, territory, or district relating to narcotic drugs or marijuana, the offender shall be guilty of a felony and shall be fined not more than two thousand dollars (\$2,000) and be imprisoned in the state penitentiary not less than (5) nor more than ten (10) years. For a third or subsequent offense, or if, the offender shall previously have been convicted two (2) or more times in the aggregate of any violation of the law of the United States or of any other state, territory, or district relating to narcotic drugs or marijuana, the offender shall be guilty of a felony and shall be fined not more than two thousand dollars (\$2,000) and be imprisoned in the state penitentiary not less than ten (10) or more than twenty (20) years.

Except in the case of conviction for a first offense for violation of the provisions of this subchapter the imposition or execution of sentence shall not be suspended and probation or parole shall not be granted until the minimum imprisonment herein provided for the offense shall have been served.

(2) A person violating § 20-64-217 in a manner involving only a preparation exempted by § 20-64-208 for a first conviction shall be fined not more than twenty-five dollars (\$25.00), for a second conviction shall be fined not more than fifty dollars (\$50.00), and for a third or subsequent conviction shall be fined not more than one hundred dollars (\$100).

History. Acts 1937, No. 344, § 20; Pope's Dig., § 10145; Acts 1955, No. 155, § 5; 1961, No. 418, § 1; 1963, No. 113, § 1; 1975, No. 928, § 24; A.S.A. 1947, § 82-1020.

Publisher's Notes. Acts 1963, No. 113, § 2, provided that the act applied to offenses committed and to prosecutions pending on February 28, 1963.

Acts 1975, No. 928, § 2, provided that,

notwithstanding that all or part of a statute defining a criminal offense was amended or repealed by the act, the provisions so amended or repealed would remain in force for the purpose of authorizing the prosecution, conviction, and punishment of a person committing an offense under the provisions prior to April 8, 1975.

CASE NOTES

ANALYSIS

Instructions.

Statute of limitation.

Instructions.

After a verdict of guilty and imposition of a sentence of two years' imprisonment, it was not error to instruct the jury to return to deliberations and amend its verdict by also imposing a fine. *Brown v. State*, 248 Ark. 561, 453 S.W.2d 50 (1970).

sion of marijuana is barred by the statute of limitations where not filed within one year after commission of the alleged offense. *Mellwain v. State*, 226 Ark. 818, 294 S.W.2d 350 (1956).

Cited: *Perez v. State*, 249 Ark. 1111, 463 S.W.2d 394 (1971); *Crutchfield v. State*, 251 Ark. 137, 471 S.W.2d 361 (1971); *Diffie v. State*, 290 Ark. 194, 718 S.W.2d 94 (1986); *Hales v. State*, 299 Ark. 93, 771 S.W.2d 285 (1989).

Statute of Limitation.

First offense charge of unlawful posses-

20-64-221. Effect of acquittal or conviction under federal narcotic laws.

No person shall be prosecuted for a violation of any provision of this subchapter if such person has been acquitted or convicted under the federal narcotic laws of the same act or omission which, it is alleged, constitutes a violation of this subchapter.

History. Acts 1937, No. 344, § 21; Pope's Dig., § 10146; A.S.A. 1947, § 82-1021.

20-64-222. Constitutionality.

If any provision of this subchapter or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the subchapter which can be given effect without the invalid provision or application, and to this end the provisions of this subchapter are declared to be severable.

History. Acts 1937, No. 344, § 22.

20-64-223. Interpretation.

This subchapter shall be so interpreted and construed as to effectuate its general purpose, to make uniform the laws of those states which enact it.

History. Acts 1937, No. 344, § 23; Pope's Dig., § 10148; A.S.A. 1947, § 82-1022.

20-64-224. Inconsistent laws repealed.

All acts or parts of acts which are inconsistent with the provisions of this subchapter are repealed.

History. Acts 1937, No. 344, § 24.

20-64-225. Name of act.

This subchapter may be cited as the "Uniform Narcotic Drug Act."

History. Acts 1937, No. 344, § 25; Pope's Dig., § 10150; A.S.A. 1947, § 82-1023.

20-64-226. [Reserved.]

Publisher's Notes. Uniform Narcotic Drug Act (U.L.A.) § 26, which was not adopted in Arkansas, is an effective date provision.

SUBCHAPTER 3 — ARKANSAS DRUG ABUSE CONTROL ACT

SECTION.

- 20-64-301. Title.
- 20-64-302. Definitions.
- 20-64-303. Minor violations of subchapter.
- 20-64-304. Penalties.
- 20-64-305. Duty of prosecuting attorneys.
- 20-64-306. Prohibited acts.
- 20-64-307. Seizure and forfeiture of contraband — Generally.
- 20-64-308. Seizure and forfeiture of contraband — Hearing and disposition.
- 20-64-309. Depressant and stimulant drugs — Manufacturing, compounding, or processing prohibited — Exceptions.
- 20-64-310. Depressant and stimulant drugs — Sale, delivery, or disposal prohibited — Exceptions.
- 20-64-311. Depressant and stimulant

SECTION.

- drugs — Possession prohibited — Exceptions.
- 20-64-312. Depressant and stimulant drugs — Falsely obtaining or attempting to obtain prohibited — Exceptions.
- 20-64-313. Depressant and stimulant drugs — Records by certain persons required.
- 20-64-314. Depressant and stimulant drugs — Limitations on filling of prescriptions.
- 20-64-315. Depressant and stimulant drugs — Exemptions from §§ 20-64-309 — 20-64-315.
- 20-64-316. Authority of employees of the Department of Health to investigate, examine, and inspect.
- 20-64-317. Rules and regulations.

Cross References. Uniform Controlled Substances Act, § 5-64-101 et seq.

Effective Dates. Acts 1975, No. 928,

§ 1: effective simultaneously with the Arkansas Criminal Code on Jan. 1, 1976.

RESEARCH REFERENCES

C.J.S. 28 C.J.S., Drugs, Supp., § 117.

CASE NOTES

Cited: Arkansas State Medical Bd. v. (1971); Hosto v. Brickell, 265 Ark. 147, 577
Grimmett, 250 Ark. 1, 463 S.W.2d 662 S.W.2d 401 (1979).

20-64-301. Title.

This subchapter may be cited as the "Arkansas Drug Abuse Control Act".

History. Acts 1967, No. 492, § 1;
A.S.A. 1947, § 82-2101.

20-64-302. Definitions.

As used in this subchapter, unless the context otherwise requires:

- (1) "Board" means the State Board of Health;
- (2) "Counterfeit drug" means a drug which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, or device, or any likeness thereof, of a drug manufacturer, processor, packer, or distributor other than the person or persons who in fact manufactured, processed, packed, or distributed the drug and which thereby falsely purports, or is represented to be the product of, or to have been packed or distributed by, another drug manufacturer, processor, packer, or distributor;
- (3) "Depressant or stimulant drug" means:
 - (A) Any drug which contains any quantity of barbituric acid or any of the salts of barbituric acid or any derivative of barbituric acid which has been designated under § 502(d) of the federal Food, Drug, and Cosmetic Act, as presently in force and effect, as habit-forming and such other derivatives as the board shall define as habit-forming, provided that in formulating these definitions, the board shall take into consideration the provisions of the federal Food, Drug, and Cosmetic Act as it exists from time to time and shall amend the definitions so as to keep them in harmony with the definitions prescribed by the federal Food, Drug, and Cosmetic Act, insofar as is possible under the standards established in this subchapter and under the policy of it;
 - (B) Any drug which contains any quantity of:
 - (i) Amphetamine or any of its optical isomers;
 - (ii) Any salt of amphetamine or any salt of an optical isomer of amphetamine; or
 - (iii) Any substance designated by regulations promulgated under the federal act or by the board as habit-forming because of its stimulant effect on the central nervous system.

In formulating these regulations, the board shall take into consideration the regulations promulgated from time to time under the federal Food, Drug, and Cosmetic Act and shall amend the regulations so as to keep them in harmony with the definitions prescribed by the federal Food, Drug, and Cosmetic Act.

(C) Any drug which contains any quantity of a substance designated by regulations promulgated under the federal Food, Drug, and Cosmetic Act or by the board as having a potential for abuse because of its depressant or stimulant effect on the central nervous system or its hallucinogenic effect, provided that the board in formulating its regulations shall take into consideration all regulations promulgated pursuant to the federal Food, Drug, and Cosmetic Act and shall amend its regulations so as to keep them in harmony with the regulations prescribed by the federal Food, Drug, and Cosmetic Act;

(4) "Drug" means articles recognized in the official *United States Pharmacopoeia*, or official *Homeopathic Pharmacopoeia of the United States*, or official *National Formulary*, or any supplement to any of them, but does not include devices or their components, parts, or accessories;

(5) "Federal act" designates the federal Food, Drug, and Cosmetic Act, which was in effect on June 30, 1967, and all amendments thereto;

(6) "Manufacture", "compound", or "process" shall include repackaging or otherwise changing the container, wrapper, or labeling of any drug package in the furtherance of the distribution of the drug from the original place of manufacture to the person who makes final delivery or sale to the ultimate consumer, and the term "manufacturers", "compounders", and "processors" shall be deemed to refer to persons engaged in those defined activities;

(7) "Person" includes individual, partnership, corporation, and association; and

(8) "Practitioner" means a physician, dentist, veterinarian, or other person licensed in this state to prescribe or administer drugs which are subject to this subchapter.

History. Acts 1967, No. 492, § 2; A.S.A. 1947, § 82-2102.

U.S. Code. The federal Food, Drug, and Cosmetic Act referred to in this sec-

tion is codified as 21 U.S.C. § 301 et seq. Section 502(d) of the federal Food, Drug, and Cosmetic Act, referred to in this section, is codified as 21 U.S.C. § 352.

20-64-303. Minor violations of subchapter.

Nothing in this subchapter shall be construed as requiring the board to report for the institution of proceedings under this subchapter minor violations of this subchapter whenever the Director of the Department of Health believes that the public interest will be adequately served in the circumstances by a suitable written notice or warning.

History. Acts 1967, No. 492, § 6; A.S.A. 1947, § 82-2106.

20-64-304. Penalties.

(a)(1) Any person violating any of the provisions of this subchapter commits a felony and shall, upon conviction, be fined not more than two thousand dollars (\$2,000) or be imprisoned in the state penitentiary for not more than two (2) years, or be both fined and imprisoned, in the discretion of the court.

(2) For a second offense, the offender commits a felony and shall be fined not more than two thousand dollars (\$2,000) and be imprisoned in the state penitentiary for not less than three (3) years nor more than (5) years.

(3) For a third or subsequent offense, the offender commits a felony and shall be fined not more than five thousand dollars (\$5,000) and be imprisoned in the state penitentiary for not less than five (5) years nor more than ten (10) years.

(b) No person shall be subject to the penalties of subsection (a) of this section, for having violated § 20-64-306(9) and (10) if the person acted in good faith and had no reason to believe that use of the punch, die, plate, stone, or other thing involved would result in a drug being a counterfeit drug or for having violated § 20-64-306(10) if the person doing the act or causing it to be done acted in good faith and had no reason to believe that the drug was a counterfeit drug.

History. Acts 1967, No. 492, § 4; 1975, No. 928, § 25; A.S.A. 1947, § 82-2104.

Publisher's Notes. Acts 1975, No. 928, § 2, provided that, notwithstanding that all or part of a statute defining a criminal offense was amended or repealed

by the act, the provisions so amended or repealed would remain in force for the purpose of authorizing the prosecution, conviction, and punishment of a person committing an offense under the provisions prior to April 8, 1975.

20-64-305. Duty of prosecuting attorneys.

It shall be the duty of each prosecuting attorney to whom the board reports any violation of this subchapter to cause appropriate proceedings to be instituted in the proper courts without delay and to be prosecuted in the manner required by law.

History. Acts 1967, No. 492, § 6; A.S.A. 1947, § 82-2106.

20-64-306. Prohibited acts.

The following acts and the causing thereof within the State of Arkansas are prohibited:

(1) The manufacture, compounding, or processing of a drug in violation of § 20-64-309;

(2) The sale, delivery, or other disposition of a drug in violation of § 20-64-310;

(3) The possession of a drug in violation of § 20-64-311;

(4) Obtaining a drug in violation of § 20-64-312;

(5) The failure to prepare or obtain, or the failure to keep, a complete and accurate record with respect to any drug as required by § 20-64-313;

(6) The refusal to permit access to or copying of any record as required by § 20-64-313;

(7) The refusal to permit entry or inspection as authorized by § 20-64-313;

(8) The filling or refilling of any prescription in violation of § 20-64-314;

(9) Making, selling, disposing of, or keeping in possession, control, or custody, or concealing any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as to render a drug a counterfeit drug;

(10) The doing of any act which causes a drug to be a counterfeit drug, or the sale or dispensing, or the holding for sale or dispensing, of a counterfeit drug.

History. Acts 1967, No. 492, § 3;
A.S.A. 1947, § 82-2103.

20-64-307. Seizure and forfeiture of contraband — Generally.

The following are declared to be contraband and shall be seized and forfeited without warrant by an authorized agent of the State Board of Health whenever he or she has reasonable grounds to believe they are:

(1) A depressant or stimulant drug with respect to which a prohibited act within the meaning of § 20-64-306 has occurred;

(2) A drug that is a counterfeit;

(3) A container of a depressant or stimulant drug or of a counterfeit drug;

(4) Equipment used in manufacturing, compounding, or processing a depressant or stimulant drug with respect to which drug a prohibited act within the meaning of § 20-64-306 has occurred; and

(5) Any punch, die, plate, stone, labeling, container, or other thing used or designed for use in making a counterfeit drug or drugs.

History. Acts 1967, No. 492, § 5;
A.S.A. 1947, § 82-2105.

CASE NOTES

Search Warrant.

This section does not authorize the issuance of a search warrant. *Grimmett v.*

State, 251 Ark. 270-A, 476 S.W.2d 217 (1972).

20-64-308. Seizure and forfeiture of contraband — Hearing and disposition.

(a) When an article, drug, or other thing is seized and forfeited under the provisions of § 20-64-307, the Director of the Department of Health or his authorized agent shall, within five (5) days thereafter, publish in a newspaper having a statewide circulation a notice containing a list of the articles, equipment, drugs, or other things seized, the name or names of the person or persons, if known, from whom taken, and the place where seized.

(1) The notice shall advise that the article, drug or other thing seized and forfeited will be destroyed or sold by the Director of the Department of Health at the expiration of thirty (30) days from the date of publication of the notice.

(2) Any person claiming any interest in the article, equipment, drug, or other thing may, at any time within the thirty (30) days after the publication of the notice, petition the Director of the Department of Health for a hearing to be held in the Director of the Department of Health's office in Little Rock.

(3) The Director of the Department of Health shall set a date for the hearing not later than ten (10) days after receiving the written request at which time witnesses shall be sworn and evidence shall be taken.

(4) Within fifteen (15) days after such hearing, the Director of the Department of Health shall enter his written findings of fact and order upon the testimony so presented.

(5) The findings of fact and order of the Director of the Department of Health may be appealed to the Circuit Court of Pulaski County, Arkansas, by lodging with the court within fifteen (15) days after the Director of the Department of Health's order has been entered a transcript of record of the hearing held before the Director of the Department of Health. The circuit court shall hear no new evidence on such appeal and shall render its judgment only on errors of law.

(6) An appeal from the judgment of the circuit court may be taken to the Supreme Court of Arkansas.

(b)(1) If the Director of the Department of Health receives no written petition for a hearing within thirty (30) days from the date of the publication of notice as provided in this section, the Director of the Department of Health shall, in his discretion, proceed to take bids on the article, equipment, drug, or other things seized and forfeited under § 20-64-307 and shall sell them to the highest bidder, or he may destroy the articles, equipment, drugs, or other things and shall preserve a written record thereof for two (2) years.

(2) The proceeds for the sale of the articles, drugs, or other things shall be deposited with the Treasurer of State as nonrevenue receipts for credit to the State Apportionment Fund as general revenues to be distributed for the respective purposes as provided by law.

20-64-309. Depressant and stimulant drugs — Manufacturing, compounding, or processing prohibited — Exceptions.

No person shall manufacture, compound, or process in this state any depressant or stimulant drug, except that this prohibition shall not apply to the following persons whose activities in connection with any drug are as specified in this section:

(1) Manufacturers, compounders, and processors, operating in conformance with the laws of this state relating to the manufacture, compounding, or processing of drugs, who are regularly engaged in preparing pharmaceutical chemicals or prescription drugs for distribution through branch outlets, through wholesale druggists, or by direct shipment:

(A) To pharmacies or to hospitals, clinics, public health agencies, or physicians for dispensing by registered pharmacists upon prescriptions, or for use by or under the supervision of practitioners licensed in this state to administer the drugs in the course of their professional practice; or

(B) To laboratories or research or educational institutions for their use in lawful research, teaching, or chemical analysis;

(2) Suppliers, operating in conformance with the laws of this state relating to the manufacture, compounding, or processing of drugs of manufacturers, compounders, and processors referred to in subdivision (1) of this section;

(3) Wholesale druggists who maintain their establishments in conformance with state and local laws relating to the manufacture, compounding, or processing of drugs and are regularly engaged in supplying prescription drugs:

(A) To pharmacies, or to hospitals, clinics, public health agencies, or physicians for dispensing by registered pharmacists upon prescriptions or for use by or under the supervision of practitioners licensed in this state to administer the drugs in the course of their professional practice; or

(B) To laboratories or research or educational institutions for their use in lawful research, teaching, or clinical analysis;

(4) Pharmacies, hospitals, clinics, and public health agencies which maintain their establishments in conformance with state and local laws regulating the practice of pharmacy and medicine which are regularly engaged in dispensing drugs upon prescriptions of practitioners licensed in this state to administer the drugs for patients under the care of the practitioners in the course of their professional practice;

(5) Practitioners licensed in this state to prescribe or administer depressant or stimulant drugs, while acting in the course of their professional practice;

(6) Persons who use depressant or stimulant drugs in research, teaching, or chemical analysis and not for sale;

(7) Officers and employees of this state, or of a political subdivision of this state or of the United States while acting in the course of their official duties;

(8) An employee or agent of any person described in subdivisions (1) through (6) of this section and a nurse under the supervision of a practitioner licensed by law in this state to administer depressant or stimulant drugs, while the employee or nurse is acting in the course of his employment or occupation and not on his own account.

History. Acts 1967, No. 492, § 7;
A.S.A. 1947, § 82-2107.

CASE NOTES

Cited: Floyd v. Arkansas State Bd. of Pharmacy, 248 Ark. 459, 451 S.W.2d 874 (1970); Grimmett v. Arkansas State Medical Bd. v. Grimmett, 250 Ark. 1, 463 S.W.2d 662 (1971); Grimmett v. State, 251 Ark. 270-A, 476 S.W.2d 217 (1972).

20-64-310. Depressant and stimulant drugs — Sale, delivery, or disposal prohibited — Exceptions.

No person shall sell, deliver, or otherwise dispose of any depressant or stimulant drug or counterfeit drug to any other person unless that person is:

(1) A person described in § 20-64-309, while the person is acting in the ordinary and authorized course of his business, profession, occupation, or employment; or

(2) A common or contract carrier or warehouseman, or an employee thereof, whose possession of any depressant or stimulant drug or counterfeit drug is in the usual course of his business or employment as such.

History. Acts 1967, No. 492, § 7;
A.S.A. 1947, § 82-2107.

CASE NOTES

Cited: Floyd v. Arkansas State Bd. of Pharmacy, 248 Ark. 459, 451 S.W.2d 874 (1970); Grimmett v. Arkansas State Medical Bd. v. Grimmett, 250 Ark. 1, 463 S.W.2d 662 (1971); Grimmett v. State, 251 Ark. 270-A, 476 S.W.2d 217 (1972).

20-64-311. Depressant and stimulant drugs — Possession prohibited — Exceptions.

No person, other than a person described in § 20-64-309 or § 20-64-310(2), shall possess any depressant or stimulant drug unless:

(1) The drug was obtained upon a valid prescription and is held in the original container in which the drug was delivered; or

(2) The drug was delivered by a practitioner in the course of his professional practice, and the drug is held in the immediate container in which the drug was delivered.

History. Acts 1967, No. 492, § 7;
A.S.A. 1947, § 82-2107.

CASE NOTES

Cited: Floyd v. Arkansas State Bd. of Pharmacy, 248 Ark. 459, 451 S.W.2d 874 (1970); Arkansas State Medical Bd. v. Grimmert, 250 Ark. 1, 463 S.W.2d 662 (1971); Grimmert v. State, 251 Ark. 270-A, 476 S.W.2d 217 (1972).

20-64-312. Depressant and stimulant drugs — Falsely obtaining or attempting to obtain prohibited — Exceptions.

(a) No person other than a person described in § 20-64-309(7) shall obtain or attempt to obtain a depressant or stimulant drug by:

(1) Fraud, deceit, misrepresentation, or subterfuge;

(2) Falsely assuming the title of or representing himself to be a manufacturer, wholesaler, practitioner, pharmacist, owner of a pharmacy, or other persons authorized to possess stimulant or depressant drugs;

(3) The use of a forged or altered prescription; or

(4) The use of a false name or false address on a prescription.

(b) However, this section shall not apply to drug manufacturers, their agents, or employees when the manufacturers, their agents, or employees are authorized to engage in and are actually engaged in investigative activities directed toward the safeguarding of the drug manufacturer's trademark.

History. Acts 1967, No. 492, § 7;
A.S.A. 1947, § 82-2107.

CASE NOTES

Cited: Floyd v. Arkansas State Bd. of Pharmacy, 248 Ark. 459, 451 S.W.2d 874 (1970); Arkansas State Medical Bd. v. Grimmert, 250 Ark. 1, 463 S.W.2d 662 (1971); Grimmert v. State, 251 Ark. 270-A, 476 S.W.2d 217 (1972).

20-64-313. Depressant and stimulant drugs — Records by certain persons required.

(a)(1) Every person engaged in manufacturing, compounding, processing, selling, delivering, or otherwise disposing of any depressant or stimulant drug shall, on and after June 30, 1967, prepare a complete and accurate record of all stocks of each drug on hand and shall keep the record for three (3) years, except that if this record has already been prepared in accordance with § 511(d) of the federal Food, Drug, and Cosmetic Act, no additional record shall be required, provided that all records prepared under § 511(d) of the federal Food, Drug, and Cosmetic Act have been retained and are made available to the State Board of Health upon request. When additional depressant or stimulant drugs are designated by the board after June 30, 1967, a similar record must be prepared upon the effective date of the designation on and after June 30, 1967. Every person manufacturing, compounding, or processing any depressant or stimulant drug shall prepare and keep, for not less than three (3) years, a complete and accurate record of the kind and quantity

of each drug manufactured, compounded, or processed and the date of the manufacture, compounding, or processing.

(2) Every person selling, delivering, or otherwise disposing of any depressant or stimulant drug shall prepare or obtain, and keep for not less than three (3) years, a complete and accurate record of the kind and quantity of each drug received, sold, delivered, or otherwise disposed of, the name and address from whom it was received and to whom it was sold, delivered, or otherwise disposed of, and the date of the transaction.

(b)(1) Every person required by subdivision (a)(1) of this section to prepare or obtain, and keep, records and any carrier maintaining records with respect to any shipment containing any depressant or stimulant drug, and every person in charge, or having custody, of the records, shall, upon request of an officer or employee designated by the board, permit an officer or employee at reasonable times to have access to and copy the records. For the purposes of verification of the records and of enforcement of this subchapter, officers or employees designated by the department are authorized, to enter, at reasonable times, any factory, warehouse, establishment, or vehicle in which any depressant or stimulant drug is held, manufactured, compounded, processed, sold, delivered, or otherwise disposed of and to inspect, within reasonable limits and in a reasonable manner, the factory, warehouse, establishment, or vehicle, and all pertinent equipment, finished and unfinished material, containers and labeling therein, and all things therein including records, files, papers, processes, controls, and facilities; and to inventory any stock of any such drug therein and obtain samples of any drug.

(2) No inspection authorized by subdivision (b)(1) of this section shall extend to:

- (A) Financial data;
- (B) Sales data other than shipment data;
- (C) Pricing data;
- (D) Personnel data; or
- (E) Research data.

(c) The provisions of subsections (a) and (b) of this section shall not apply to a licensed practitioner described in § 20-64-309(5) with respect to any depressant or stimulant drug received, prepared, processed, administered, or dispensed by him in the course of his professional practice unless the practitioner regularly engages in dispensing any drug or drugs to his patients for which they are charged, either separately or together with charges for other professional services.

History. Acts 1967, No. 492, § 7; A.S.A. 1947, § 82-2107.

U.S. Code. Section 511(d) of the federal act referred to in this section was

formerly codified as 21 U.S.C. § 511(d), which has been repealed. For present similar provisions, see 21 U.S.C. § 827 et seq.

CASE NOTES

Cited: Floyd v. Arkansas State Bd. of Pharmacy, 248 Ark. 459, 451 S.W.2d 874 (1970); Arkansas State Medical Bd. v. Grimmett, 250 Ark. 1, 463 S.W.2d 662 (1971); Grimmett v. State, 251 Ark. 270-A, 476 S.W.2d 217 (1972).

20-64-314. Depressant and stimulant drugs — Limitations on filling of prescriptions.

No prescription for any depressant or stimulant drug may be filled or refilled more than six (6) months after the date on which the prescription was issued, and no prescription which is authorized to be refilled may be refilled more than five (5) times. However, nothing in this subchapter shall be construed as preventing a practitioner from issuing a new prescription for the same drug either in writing or orally. An oral prescription for the drug shall be promptly reduced to writing on a new prescription blank and filed by the pharmacist filling it. If no indication of refill status is indicated on the prescription, it shall not be refilled.

History. Acts 1967, No. 492, § 7; A.S.A. 1947, § 82-2107.

CASE NOTES

Cited: Floyd v. Arkansas State Bd. of Pharmacy, 248 Ark. 459, 451 S.W.2d 874 (1970); Arkansas State Medical Bd. v. Grimmett, 250 Ark. 1, 463 S.W.2d 662 (1971); Grimmett v. State, 251 Ark. 270-A, 476 S.W.2d 217 (1972).

20-64-315. Depressant and stimulant drugs — Exemptions from §§ 20-64-309 — 20-64-315.

Depressant or stimulant drugs exempted under § 511(f) of the federal Food, Drug, and Cosmetic Act and such other drugs as the board shall specify are exempted from the application of §§ 20-64-309 — 20-64-315.

History. Acts 1967, No. 492, § 7; A.S.A. 1947, § 82-2107.

U.S. Code. Section 511(f) of the federal act referred to in this section was formerly codified as 21 U.S.C. § 360a, which has been repealed. For present similar provisions, see 21 U.S.C. §§ 801 et seq.

CASE NOTES

Cited: Floyd v. Arkansas State Bd. of Pharmacy, 248 Ark. 459, 451 S.W.2d 874 (1970); Arkansas State Medical Bd. v. Grimmett, 250 Ark. 1, 463 S.W.2d 662 (1971); Grimmett v. State, 251 Ark. 270-A, 476 S.W.2d 217 (1972).

20-64-316. Authority of employees of the Department of Health to investigate, examine, and inspect.

Any officer or employee of the Department of Health designated by the Director of the Department of Health to conduct examinations, investigations, or inspections under this subchapter relating to depres-

sant or stimulant drugs or to counterfeit drugs may, when so authorized by the Director of the Department of Health:

- (1) Carry firearms;
- (2) Execute and serve search warrants and arrest warrants;
- (3) Execute seizure by process issued pursuant to §§ 20-64-307 and 20-64-308;
- (4) Make arrests without warrant for offenses under this subchapter with respect to drugs if the offense is committed in his presence; and
- (5) Make seizures of drugs or containers or equipment, punches, dies, plates, stone, labeling, or other things, if they are, or he has reasonable grounds to believe that they are, subject to seizure and condemnation under §§ 20-64-307 and 20-64-308.

History. Acts 1967, No. 492, § 9;
A.S.A. 1947, § 82-2109.

CASE NOTES

Search Warrant.

State, 251 Ark. 270-A, 476 S.W.2d 217 (1972).

This section does not authorize the issuance of a search warrant. *Grimmett v.*

20-64-317. Rules and regulations.

(a) The authority to promulgate rules and regulations for the efficient enforcement of this subchapter is vested in the State Board of Health.

(b) Before the rules or regulations or amendments thereto shall become effective, the board shall publish notice twice weekly for two (2) consecutive weeks in a newspaper of general circulation in this state, setting forth in the newspaper notice a concise summary of the proposed rule, regulation, or amendment thereto and setting forth, in addition, the time and place at which open public hearings are to be held on the rules and regulations.

(c) The hearing shall be held not earlier than ten (10) days nor later than fifteen (15) days following the last published notice thereon.

(d) The board is authorized to make the regulations promulgated under this subchapter conform, insofar as practicable, with those promulgated under the federal Food, Drug, and Cosmetic Act.

History. Acts 1967, No. 492, § 8; and Cosmetic Act, referred to in this section, is codified as 21 U.S.C. § 301 et seq.
A.S.A. 1947, § 82-2108.

U.S. Code. The federal Food, Drug,

SUBCHAPTER 4 — HALLUCINOGENIC DRUGS

SECTION.

20-64-401. Penalties.

20-64-402. Use, possession, sale, etc., prohibited — Generally.

SECTION.

20-64-403. Use, possession, sale, etc., prohibited — Exceptions.

20-64-401. Penalties.

(a) Any person violating any provision of this subchapter shall be guilty of a felony and upon conviction shall be subject to imprisonment in the state penitentiary for a term of not less than three (3) years nor more than five (5) years.

(b) For the second or any subsequent violation of this subchapter, the person shall be subject to imprisonment in the state penitentiary for a term of not less than five (5) years or more than ten (10) years.

History. Acts 1967, No. 111, § 3;
A.S.A. 1947, § 82-2112.

20-64-402. Use, possession, sale, etc., prohibited — Generally.

It shall be unlawful for any person, except as provided in this subchapter, to use, possess, have in one's possession, sell, exchange, give or attempt to give to another, barter, or otherwise dispose of:

- (1) Lysergic acid;
- (2) LSD, which is d-lysergic acid diethylamide;
- (3) DMT, which is N-N-dimethyltryptamine;
- (4) Any compound, mixture, or preparation which is physiologically similar to any drug listed in subdivisions (1), (2), and (3) of this section in its effect on the central nervous system; or
- (5) Any salt or derivative of any drug listed in subdivisions (1), (2), and (3) of this section.

History. Acts 1967, No. 111, § 1;
A.S.A. 1947, § 82-2110.

CASE NOTES**ANALYSIS**

Drug analysis.
Evidence.

Drug Analysis.

Defendant charged with the sale of LSD was not entitled to state funds to hire a chemist to make an independent analysis of the LSD. *Alexander v. State*, 257 Ark. 343, 516 S.W.2d 368 (1974).

Evidence.

As long as alleged accomplices were charged with separate offenses under this section and the asserted accomplice, who was asked to testify, was not guilty of the principal offense on trial, it made no difference in his ability to testify that he was guilty of offense defined by this section. *Sweatt v. State*, 251 Ark. 650, 473 S.W.2d 913 (1971).

20-64-403. Use, possession, sale, etc., prohibited — Exceptions.

The drugs enumerated in § 20-64-402 may lawfully be possessed by:

- (1) A manufacturer licensed by the United States Food and Drug Administration to produce and distribute the drugs, or his agent, to be sold only to a person authorized in this section to possess the drugs or transport in interstate commerce. Each shipment must bear the identifying number assigned by the United States Food and Drug Administration;

(2) A licensed pharmacy, to be dispensed only to a licensed physician or research scientist qualified under subdivision (3) or (4) of this section.

(A) However, every pharmacy which receives or dispenses the drug shall keep a record showing the date, amount, and source of drugs received, the date of dispensing, the name and address of the person to whom dispensed, and the kind and quantity of drugs.

(B) The record shall be kept for a period of three (3) years from the date of the transaction recorded and shall be open to inspection by any peace officer or health officer of this state or by any equivalent federal officer;

(3) A licensed physician, provided that every physician who receives or administers the drug shall keep a record showing the date, amount, and source of drugs received, the date of administration, the name and address of the person to whom administered, and the kind and quantity of drugs.

(A) Every record shall be kept for a period of three (3) years from the date of administration and shall be open to inspection by any peace officer or health officer of this state or by any equivalent federal officer.

(B) Any physician who administers any drug listed in § 20-64-402 to any human being shall keep the patient under his personal supervision and care until the effect of the drug has entirely ceased;

(4) A licensed psychologist or a member of the faculty of a college or university in this state who is qualified by scientific training and experience to investigate the safety and effectiveness of the drugs, to be used only for research and not to be administered to any human being except under the supervision of a physician as provided in subdivision (3) of this section.

(A) Any psychologist or research scientist who uses the drug shall keep a record showing the date, amount, and source of drugs received and the disposition and use of all drugs.

(B) Every record shall be kept for a period of three (3) years from date of use and shall be open to inspection by any peace officer or health officer of this state or by any equivalent federal officer.

History. Acts 1967, No. 111, § 2;
A.S.A. 1947, § 82-2111.

SUBCHAPTER 5 — CONTROLLED SUBSTANCES AND LEGEND DRUGS

SECTION.

- 20-64-501. Applicability.
- 20-64-502. Construction.
- 20-64-503. Definitions.
- 20-64-504. Sales — Permit required.
- 20-64-505. Wholesale distributor — Permit required.
- 20-64-506. Wholesale distributors — Shipment to certain licensed professionals.

SECTION.

- 20-64-507. Regulations.
- 20-64-508. Revocation or suspension of licenses.
- 20-64-509. Penalties.
- 20-64-510. Hearing procedures.
- 20-64-511. Violations.
- 20-64-512. Inspection of records.
- 20-64-513. Injunctive powers.

Cross References. Record keeping of legend drugs dispensed, § 17-95-102.

Effective Dates. Acts 1969, No. 173, § 8; Mar. 5, 1969. Emergency clause provided: "It being found and determined by the General Assembly that the sale of depressant and stimulant drugs in and into the State of Arkansas by unregistered persons is constituting a danger and threat to the health, safety and welfare of the people of the State of Arkansas and must be controlled, and that the immediate passage of this Act is necessary. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the preservation of the public peace, health and safety, it shall be in full force and effect from the date of its passage and approval."

Acts 1981, No. 257, § 5; Feb. 27, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that the sale of controlled substances and legend drugs in the State of Arkansas by unregistered persons is constituting a danger and threat to the health, safety and welfare of the people of the State of Arkansas and must be controlled; that this Act is designed to provide such control and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

CASE NOTES

Cited: *Merrill v. State*, 277 Ark. 146, 640 S.W.2d 787 (1982).

20-64-501. Applicability.

Nothing in this subchapter shall apply to the sale of chemicals or poisons for use for nonmedical purposes, or for uses as insecticides or biologics or medicine used for the cure, mitigation, or prevention of disease of animals or fowl, and uses for agricultural use which comply with the requirements of the federal Food, Drug, and Cosmetic Act and all amendments thereto unless those products are prescription drugs under this subchapter.

History. Acts 1969, No. 173, § 5; A.S.A. 1947, § 82-2117; Acts 1991, No. 739, § 1.

U.S. Code. The federal Food, Drug, and Cosmetic Act referred to in this section is codified as 21 U.S.C. § 301 et seq.

20-64-502. Construction.

(a) This subchapter shall be construed to repeal only those provisions of the pharmacy laws of Arkansas in direct and specific conflict herewith.

(b) The provisions of this subchapter shall otherwise be cumulative to the pharmacy laws of Arkansas.

History. Acts 1969, No. 173, § 7.

20-64-503. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Blood" means whole blood collected from a single donor and processed either for transfusion or further manufacturing;

(2) "Blood component" means that part of blood separated by physical or mechanical means;

(3) "Board" means the Arkansas State Board of Pharmacy;

(4) "Controlled substance" means those substances, drugs, or immediate precursors listed in Schedules I through VI of the Uniform Controlled Substances Act, § 5-64-101 et seq., and revised by the coordinator pursuant to his or her authority under §§ 5-64-214 — 5-64-216;

(5) "Drug sample" means a unit of a prescription drug that is not intended to be sold and is intended to promote the sale of the drug;

(6)(A) "Legend drug" means a drug limited by § 503(b)(1) of the federal Food, Drug, and Cosmetic Act to being dispensed by or upon a medical practitioner's prescription because the drug is:

(i) Habit-forming;

(ii) Toxic or having potential for harm; or

(iii) Limited in its use to use under a practitioner's supervision by the new drug application for the drug.

(B) The product label of a legend drug is required to contain the statement "CAUTION: FEDERAL LAW PROHIBITS DISPENSING WITHOUT A PRESCRIPTION".

(C) A legend drug includes prescription drugs subject to the requirement of § 503(b)(1) of the federal Food, Drug, and Cosmetic Act which shall be exempt from § 502(F)(1) if certain specified conditions are met;

(7) "Manufacturer" means anyone who is engaged in manufacturing, preparing, propagating, compounding, processing, packaging, repackaging, or labeling of a prescription drug;

(8) "Person" includes individual, partnership, corporation, business firm, and association;

(9) "Prescription drug" means controlled substances, legend drugs, and veterinary legend drugs as defined herein;

(10) "Veterinary legend drugs" means drugs defined in 21 C.F.R. 201.105 and bearing a label required to bear the cautionary statement, "CAUTION: FEDERAL LAW RESTRICTS THIS DRUG TO USE BY OR ON ORDER OF A LICENSED VETERINARIAN";

(11) "Wholesale distribution" means the distribution of prescription drugs to persons other than consumers or patients but does not include:

(A) Intracompany sales;

(B) The purchase or other acquisition by a hospital or other health care entity that is a member of a group purchasing organization of a drug for its own use from the group purchasing organization or from other hospitals or health care entities that are members of the organizations;

(C) The sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug by a charitable organization described in Section 501(c)(3) of the federal Internal Revenue Code to a nonprofit affiliate of the organization to the extent otherwise permitted by law;

(D) The sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug among hospitals or other health care entities that are under common control. For the purposes of this section, "common control" means the power to direct or cause the direction of the management and policies of a person or an organization whether by ownership of stock or voting rights, by contract, or otherwise;

(E) The sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug for emergency medical reasons; for purposes of this section, "emergency medical reasons" includes transfers of prescription drugs by a retail pharmacy to another retail pharmacy to alleviate a temporary shortage;

(F) The sale, purchase, or trade of a drug, an offer to sell, purchase, or trade a drug, or the dispensing of a drug pursuant to a prescription;

(G) The distribution of drug samples by manufacturers' representatives or distributors' representatives; or

(H) The sale, purchase, or trade of blood components intended for transfusion; and

(12) "Wholesale distributor" means any person engaged in wholesale distribution of prescription drugs, including, but not limited to, manufacturers; repackers' own-label distributors; private label distributors; jobbers; brokers; warehouses, including manufacturers' and distributors' warehouses, chain drug warehouses, and wholesale drug warehouses; independent wholesale drug traders; prescription drug repackagers; physicians; dentists; veterinarians; birth control and other clinics; individuals; hospitals; nursing homes and their providers; health maintenance organizations and other health care providers; and retail and hospital pharmacies that conduct wholesale distributions. A wholesale drug distributor shall not include any for-hire carrier or person or entity hired solely to transport prescription drugs.

History. Acts 1969, No. 173, § 1; 1979, No. 751, § 3; 1981, No. 257, § 1; A.S.A. 1947, § 82-2113; Acts 1991, No. 739, § 2.

U.S. Code. The federal Food, Drug, and Cosmetic Act referred to in this sec-

tion is codified as 21 U.S.C. § 301 et seq. Section 501(c)(3) of the Internal Revenue Code, referred to in this section, is codified as 26 U.S.C. § 501(c)(3).

20-64-504. Sales — Permit required.

It shall be unlawful for any person to sell or offer for sale by advertisement, circular, letter, sign, oral solicitation, or any other means any prescription drug unless the person holds and possesses a permit authorizing the sale as provided by this subchapter.

History. Acts 1969, No. 173, § 4; 1979, No. 751, § 6; A.S.A. 1947, § 82-2116; Acts 1991, No. 739, § 3.

CASE NOTES

ANALYSIS

Constitutionality.
Effect of 1979 amendment.

Constitutionality.

There is no equal protection violation in the fact that someone convicted of selling controlled substances illegally under § 5-64-401 is guilty of a felony, while someone convicted of selling controlled substances without a permit under this section is guilty only of a misdemeanor. The legislature could reasonably have found that the severe penalty appropriate to efforts to control the illegal sale of drugs to addicts

is not necessary in the control of businesses and professions that sell and use drugs legally for the treatment of patients. *Merrill v. State*, 277 Ark. 146, 640 S.W.2d 787 (1982).

Effect of 1979 Amendment.

The 1979 amendment to this section did not either expressly or impliedly repeal § 5-64-401 of the Controlled Substances Act, which makes the illegal sale of controlled substances a felony. *Merrill v. State*, 277 Ark. 146, 640 S.W.2d 787 (1982).

Cited: *Reding v. State*, 277 Ark. 288, 641 S.W.2d 24 (1982).

20-64-505. Wholesale distributor — Permit required.

(a) Every wholesale distributor who shall engage in the wholesale distribution of prescription drugs, to include without limitation, manufacturing in this state, shipping into this state, or selling or offering to sell in this state, shall register annually with the Arkansas State Board of Pharmacy by application for a permit on a form furnished by the board and accompanied by a fee of two hundred dollars (\$200). The board may require a separate license for each facility directly or indirectly owned or operated by the same business entity within this state, or for a parent entity with divisions, subdivisions, subsidiaries, or affiliate companies within this state when operations are conducted at more than one (1) location and there exists joint ownership and control among all the entities.

(b)(1) The permit may be renewed annually at a renewal permit fee of one hundred dollars (\$100).

(2) All permits issued under this section shall expire on December 31 of each calendar year.

(3) Each application for the renewal of the permit must be made on or before December 31 of each year, at which time the previous permits shall become null and void.

(c) Each permit issued hereunder shall be displayed by the holder thereof in a conspicuous place.

History. Acts 1969, No. 173, § 2; 1979, No. 751, § 4; 1981, No. 257, § 2; A.S.A. 1947, § 82-2114; Acts 1991, No. 739, § 4.

20-64-506. Wholesale distributors — Shipment to certain licensed professionals.

(a) All wholesale distributors must, before shipping to a recipient in this state any prescription drug as defined in this subchapter, ascertain that the person to whom shipment is made is either a physician licensed by the Arkansas State Medical Board, a licensed Doctor of Dentistry, a licensed Doctor of Veterinary Medicine, a licensed Doctor of Podiatric Medicine, a hospital licensed by the State Board of Health, a licensed wholesale distributor as defined in this subchapter, a pharmacy licensed by the Arkansas State Board of Pharmacy, or other entity authorized by law to purchase or possess prescription drugs.

(b) No wholesale distributor shall ship any prescription drug to any person after receiving written notice from the Arkansas State Board of Pharmacy that the person no longer holds a registered pharmacy permit or is not a licensed physician, dentist, veterinarian, or hospital.

History. Acts 1969, No. 173, § 2; 1979, No. 751, § 4; 1981, No. 257, § 2; A.S.A. 1947, § 82-2114; Acts 1991, No. 739, § 5.

20-64-507. Regulations.

(a) The Arkansas State Board of Pharmacy shall adopt regulations for the wholesale distribution of prescription drugs which promote the public health and welfare and which comply with the minimum standards, terms, and conditions of the federal Prescription Drug Marketing Act and federal regulations, including without limitations 21 C.F.R. 205, for licensing by state authorities of persons who engage in the wholesale distribution in interstate commerce of prescription drugs. The regulations shall include, without limitation:

(1) Minimum information from each wholesale distributor required for licensing and renewal of licenses;

(2) Minimum qualifications of persons who engage in the wholesale distribution of prescription drugs;

(3) Appropriate education or experience, or both, of persons employed in wholesale distribution of prescription drugs who assume responsibility for positions related to compliance with state licensing requirements;

(4) Minimum requirements for the storage and handling of prescription drugs; and

(5) Minimum requirements for the establishment and maintenance of prescription drug distribution records.

(b) In the event that this subchapter or regulations promulgated under this subchapter conflict with the federal Prescription Drug Marketing Act or federal regulations, the federal Prescription Drug Marketing Act or federal regulations shall control.

(c) The board shall appoint an advisory committee composed of seven (7) members, one (1) of whom shall be a representative of a pharmacy but who shall not be a member of the board, three (3) of whom shall be

representatives of wholesale drug distributors, and three (3) of whom shall be representatives of drug manufacturers. The committee shall review and make recommendations to the board on the merit of all rules and regulations dealing with pharmacy distributors, wholesale drug distributors, and drug manufacturers which are proposed by the board.

History. Acts 1969, No. 173, § 3; 1979, No. 751, § 5; 1981, No. 257, § 3; A.S.A. 1947, § 82-2115; Acts 1991, No. 739, § 6. Marketing Act, referred to in this section, is codified as 21 U.S.C. §§ 301 note, 331, 333, 353, 353 notes, and 381.

U.S. Code. The Prescription Drug

CASE NOTES

Cited: Dunhall Pharmaceuticals, Inc. v. State, 295 Ark. 483, 749 S.W.2d 666 (1988).

20-64-508. Revocation or suspension of licenses.

The Arkansas State Board of Pharmacy may revoke or suspend an existing license or may refuse to issue a license under this subchapter if the holder or applicant has committed or is found guilty by the board of any of the following:

- (1) Violation of any federal, state, or local law or regulation relating to drugs;
- (2) Violation of any provisions of this subchapter or any regulation promulgated hereunder; or
- (3) Commission of an act or engaging in a course of conduct which constitutes a clear and present danger to the public health and safety.

History. Acts 1969, No. 173, § 3; 1979, No. 751, § 5; 1981, No. 257, § 3; A.S.A. 1947, § 82-2115; Acts 1991, No. 739, § 7.

20-64-509. Penalties.

(a) After notice and hearing, whenever the Arkansas State Board of Pharmacy has found a licensee to have committed any act enumerated in § 20-64-508, the board shall have the power to impose a civil penalty and may order the license to be suspended until the penalty is paid.

(b) Before imposing any civil penalty, the board shall determine that the public health and welfare would not be impaired by the imposition of the penalty and that payment of the penalty will achieve the desired disciplinary purposes.

(c) No penalty imposed by the board shall exceed one thousand dollars (\$1,000) per violation, nor shall the board impose a penalty on a licensee where the license has been revoked by the board for a violation.

(d) Each instance where a federal, state, or local law or regulation is violated shall constitute a separate violation.

(e) The power and authority of the board to impose penalties is not to be affected by any other civil or criminal proceeding concerning the

same violation, nor shall the imposition of a penalty preclude the board from imposing other sanctions short of revocation.

History. Acts 1991, No. 739, § 8.

20-64-510. Hearing procedures.

The procedure for notice, hearing, and appeals therefrom shall be that of the Arkansas State Board of Pharmacy set forth in § 17-92-313, and that of the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 1991, No. 739, § 9.

Publisher's Notes. The reference to the code section in Title 17 has been

updated to reflect the 1995 realphabetization of the chapters in that title.

20-64-511. Violations.

A person violating any provision of this subchapter shall be guilty of a Class A misdemeanor.

History. Acts 1991, No. 739, § 10.

20-64-512. Inspection of records.

(a)(1) The Arkansas State Board of Pharmacy may conduct inspections upon all premises purporting or appearing to be used by a person licensed under this subchapter.

(2) The board in its discretion may accept a satisfactory inspection by the United States Food and Drug Administration or a state agency of another state which the board determines to be comparable to that made by the United States Food and Drug Administration or the board.

(b) A licensed person may keep records at a central location apart from the principal office of the licensee or the location at which the drugs were stored and from which they are distributed.

History. Acts 1991, No. 739, § 11.

20-64-513. Injunctive powers.

The Arkansas State Board of Pharmacy may, in its discretion and in addition to various remedies provided by law under this subchapter, apply to a court having competent jurisdiction over the parties and subject matter for a writ of injunction to restrain violations of this subchapter or of any conduct which constitutes a clear and present danger to the public health and safety.

History. Acts 1991, No. 739, § 12.

SUBCHAPTER 6 — ALCOHOL AND DRUG ABUSE PREVENTION GENERALLY

SECTION.

- 20-64-601. Bureau of Alcohol and Drug Abuse Prevention — Creation.
- 20-64-602. Bureau of Alcohol and Drug Abuse Prevention — Powers and duties.

SECTION.

- 20-64-603. Director of the Department of Human Services — Administration of state plans.
- 20-64-604, 20-64-605. [Repealed.]

Publisher's Notes. Acts 1989, No. 60 provided that references to the office of Alcohol and Drug Abuse Prevention should be applicable to the Division of Alcohol and Drug Abuse Prevention created by that act.

Acts 1993, No. 890, §§ 1 and 2, provided: Section 1. "Effective July 1, 1993, the Division of Alcohol and Drug Abuse Prevention of the Department of Human Services is transferred by a Type 1 transfer as provided for in § 25-2-104, to the Department of Health and shall be known as the Bureau of Alcohol and Drug Abuse Prevention.

"Section 2. Any and all other powers, duties, functions, records, property and funds administered or provided by other support divisions within the Department of Human Services for the Division of Alcohol and Drug Abuse Prevention shall be transferred to the Department of Health, Bureau of Alcohol and Drug Abuse Prevention."

Cross References. Department of Human Services, continued functioning within, § 25-10-102.

Effective Dates. Acts 1977, No. 644, § 7: July 1, 1977. Emergency clause provided: "It is hereby found and determined by the General Assembly that the establishment of an Office of Alcohol and Drug Abuse Prevention located under the Director's Office of the Department of Social and Rehabilitative Services will expedite the efficient administration of the laws of

this State providing for the services rendered to those who are either alcohol or drug abusers, and that it is essential that this Act be passed within sufficient time to permit the continuation of these services. Therefore, an emergency is hereby declared to exist, and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1977."

Acts 1997, No. 250, § 258: February 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor [sic], it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

20-64-601. Bureau of Alcohol and Drug Abuse Prevention — Creation.

(a) There is established within the Department of Health a Bureau of Alcohol and Drug Abuse Prevention to be located under the Office of the Director of the Department of Human Services.

(b) The head of the office shall be appointed by the Director of the Department of Human Services.

(c) Such personnel as are necessary shall be appointed by the office head to carry out the powers, duties, functions, and responsibilities of the bureau, in accordance with the requirements of law within the limits of available appropriations.

History. Acts 1977, No. 644, § 1; A.S.A. 1947, § 82-2132.

A.C.R.C. Notes. Acts 1977, No. 644, § 1 provided, in part, that the Office on Alcohol and Drug Abuse Prevention should do and perform all other actions previously performed by the Office on Alcohol Abuse and Alcoholism and the Office of Drug Abuse Prevention and that they should assume all obligations and contracts entered into by those offices.

Sections 2 and 3 of that act provided that the following offices, councils, and authority should be abolished: The Office on Alcohol Abuse and Alcoholism, the Alcohol Abuse Advisory Council, the Office of Drug Abuse Prevention, the Arkansas Drug Abuse Authority, and the Arkansas Advisory Council on Drug Abuse Prevention.

Acts 1985, No. 3, which reorganized the Department of Human Services, provided that the Office on Alcohol and Drug Abuse Prevention and the Arkansas Alcohol and Drug Abuse Authority would continue to function within the department as outlined in this subchapter.

Acts 1993, No. 890, §§ 1 and 2, provided: "Section 1. Effective July 1, 1993, the Division of Alcohol and Drug Abuse Prevention of the Department of Human Services is transferred by a Type 1 transfer as provided for in § 25-2-104, to the Department of Health and shall be known as the Bureau of Alcohol and Drug Abuse Prevention.

"Section 2. Any and all other powers, duties, functions, records, property and funds administered or provided by other support divisions within the Department of Human Services for the Division of Alcohol and Drug Abuse Prevention shall be transferred to the Department of Health, Bureau of Alcohol and Drug Abuse Prevention."

Acts 2001, No. 1829, § 1, provided: "SECTION 1. (a) The General Assembly finds that the Division of Mental Health Services of the Department of Human

Services and the Bureau of Alcohol and Drug Abuse Prevention of the Department of Health would operate more effectively if combined within a single organizational structure.

"(b) There is created a Task Force on Mental Health and Alcohol and Drug Abuse Prevention to study and make recommendations on the most effective and efficient organizational structure to house a combined Division of Mental Health Services and Bureau of Alcohol and Drug Abuse Prevention.

"(c)(1) Six (6) months after the effective date of this act, and quarterly thereafter, the Task Force on Mental Health and Alcohol and Drug Abuse Prevention shall provide reports to the House and Senate Interim Committees on Public Health, Welfare, and Labor detailing progress toward submitting a final recommendation.

"(2) The Task Force shall submit its final recommendations to the chairpersons of the House and Senate Interim Committees on Public Health, Welfare, and Labor and to the directors of the Department of Human Services and the Department of Health on or before March 1, 2002.

"(d) The Task Force on Mental Health and Alcohol and Drug Abuse Prevention shall be comprised of seven (7) members to include the Directors of the Department of Health and the Department of Human Services, one (1) member appointed by the Governor, two (2) members appointed by the House chair of the House and Senate Interim Committees on Public Health, Welfare, and Labor, and two (2) members appointed by the Senate chair of the House and Senate Interim Committees on Public Health, Welfare, and Labor.

"(e) The Department of Human Services and the Department of Health shall cooperate with the Task Force on Mental Health and Alcohol and Drug Abuse Prevention and shall provide the Task Force with such reasonable assistance and resources as the Task Force determines is necessary to complete its work.

“(f)(1) Unless otherwise amended, the provisions of this subchapter shall remain in effect until June 30, 2003.

“(2) The Task Force on Mental Health and Alcohol and Drug Abuse Prevention is abolished effective June 30, 2003.”

20-64-602. Bureau of Alcohol and Drug Abuse Prevention — Powers and duties.

(a) The Bureau of Alcohol and Drug Abuse Prevention shall:

(1) Coordinate all state and federally funded programs dealing with alcohol and drug abuse in the state;

(2) Provide information to the public on the problems and needs of alcohol and drug abusers;

(3) Make evaluations of the effectiveness and efficiency of various agencies and programs relating to alcohol and drug abuse; and

(4) Exercise all authority not inconsistent with the provisions of this subchapter as may be necessary to carry out the purposes and intent of this subchapter.

(b) The duties and responsibilities of the bureau shall include the following:

(1) Coordinate all state and federally funded programs, services, and activities relating to the prevention, treatment, rehabilitation, education intervention, and training of alcoholics and persons with alcohol and other drug abuse-related problems;

(2) Develop, administer, and implement a state plan for alcohol abuse and drug abuse prevention as defined in Pub. L. 92-255, or its successor, and develop reports on state and local activities in alcohol and drug abuse prevention with recommendations for allocations of resources by refining goals and establishing priorities;

(3) Sponsor, encourage, and conduct research into the causes, nature, and treatment of alcoholism, alcohol abuse, and drug abuse and serve as a central source of information and data collection regarding alcohol abuse and drug abuse in this state;

(4) Serve in a liaison capacity between the state and local communities and federal government with respect to alcohol abuse and drug abuse programs and, subject to the approval of the Director of the Department of Human Services, enter into agreements with and make commitments on behalf of the State of Arkansas to meet requirements for obtaining federal assistance or grants for partially financing alcohol abuse and drug abuse programs in the state;

(5) Divide the state into appropriate regions for the purpose of planning and the provision of services;

(6) As may be deemed necessary, establish district, regional, or other substate advisory councils to help carry out the duties of the bureau;

(7) Review, on a continuing basis, existing and proposed state statutes relating to alcohol abuse and drug abuse education, prevention, intervention, treatment rehabilitation, and training and make appropriate recommendations for legislation to the director and the General Assembly;

(8) Review, on a continuing basis, existing and proposed rules, policies, programs, and procedures of state agencies and political

subdivisions concerning alcohol and drug abuse and recommend to the appropriate agency or political subdivision changes in or additions to the rules, policies, programs, and procedures;

(9) Review those budget items proposed by other state agencies which are intended for alcohol or drug abuse prevention, intervention, treatment, education, rehabilitation, and training services and make recommendations to the Director of the Department of Human Services;

(10) Determine the training and orientation needs of professionals, paraprofessionals, supervisors, managers, and other persons in the public and private sectors who come in contact with those persons affected directly or indirectly with alcohol or drug abuse problems or who may impact in a preventive way with individuals who might otherwise become dependent upon alcohol or other drugs;

(11) Assist in the development of programs designed to meet identified needs;

(12) Provide technical assistance, guidance, consultation, information, and other appropriate services to local programs, local government, district and regional bodies, and state agencies regarding the creation or modification of alcohol or drug abuse programs and procedures;

(13) Establish and apply criteria for evaluation of:

(A) The effectiveness of alcohol or drug abuse programs conducted in this state; and

(B) The accuracy of information contained in and the effectiveness of literature and audiovisual aids prepared to combat alcohol and drug abuse;

(14) Specify uniform methods for keeping statistical information on all individuals receiving services related to the use or misuse of alcohol and drugs and also develop and maintain a centralized data collection and dissemination system for alcohol and drug abuse programs and activities consistent with federal and state statutes and regulations;

(15) Prepare an annual report to coincide with appropriate federal reports to be submitted to the advisory council, the director, and the Governor describing activities of the bureau and the accomplishments and effectiveness of its programs and also prepare special reports as deemed necessary for the advisory council to aid in the fulfillment of its advisory responsibilities;

(16) Develop policies, plans, and programs sponsoring and encouraging research and prevention activities in this state, especially in the categories of children and youth, women, minorities, senior citizens, and incarcerated persons but not limited to these areas;

(17) Request, as deemed necessary, reports in sufficient detail for various departments of state government regarding their alcohol or drug abuse program activities;

(18) Cooperate with and assist and solicit the cooperation and assistance of appropriate state agencies, community mental health centers and clinics, hospitals, doctors, law enforcement officials, courts,

ministers, and any and all other public or private agencies or organizations involved in or dedicated to providing services to those persons who have alcohol or drug abuse-related problems;

(19) Develop and promulgate standards, rules, and regulations for accrediting, certifying, and licensing alcohol and drug abuse prevention, treatment, and rehabilitation programs and facilities within the state, under the supervision and direction of the director, provided that the standards, rules, and regulations shall not supersede standards, rules, and regulations promulgated by other state agencies for programs or facilities whose primary mission is not alcohol and drug abuse prevention, treatment, and rehabilitation;

(20) Review the regulations, guidelines, requirements, and procedures of state and federally funded operating agencies in terms of their consistency with state alcohol and drug abuse prevention policies, priorities, procedures, and objectives and assist the agencies in making changes therein as may be appropriate;

(21) Maintain a liaison with all state and local agencies concerned with drug traffic prevention;

(22) Conduct annual site visits to all state and federally funded alcohol and drug abuse programs and facilities to determine their compliance with the standards, rules, and regulations for accrediting, certifying, and licensing as set forth in subdivision (19) of this section;

(23) Apply for and assist others in applying for state, private, or federal grants-in-aid and, with the advice and counsel of the advisory council, approve applications for state and federal grants and enter into grants and contracts with public agencies, institutes of higher learning, and private organizations or individuals for the purpose of carrying out research, prevention, education, training, treatment, intervention, and rehabilitation activities or special projects which bear directly on the problems related to alcohol and drug abuse or misuse. The contracts or grants may be entered into for these purposes without performance bonds;

(24) Be the primary agency responsible for receiving and disbursing all state, federal, and other public moneys collected for the purpose of combating alcohol and drug abuse-related problems in this state and to account for such receipts and disbursements as are made; and

(25) Do and perform all other actions and to exercise all other authority not inconsistent with the provisions of this subchapter as may be necessary to carry out the purposes and intent of this subchapter.

History. Acts 1977, No. 644, § 1; in this section, is codified as 21 U.S.C. A.S.A. 1947, § 82-2132. §§ 1101-1191.

U.S. Code. Pub. L. 92-255, referred to

20-64-603. Director of the Department of Human Services — Administration of state plans.

The Director of the Department of Human Services shall be the single state authority and shall have primary responsibility for administering

the state plan on alcohol abuse and alcoholism and the state plan on drug abuse prevention.

History. Acts 1977, No. 644, § 1; A.S.A. 1947, § 82-2132.

20-64-604, 20-64-605. [Repealed.]

Publisher's Notes. These sections, concerning the creation, membership, meetings, powers and duties of the Alcohol and Drug Abuse Authority, were repealed by Acts 1997, No. 250, § 202. They were derived from the following sources:

20-64-604. Acts 1977, No. 644, § 4; A.S.A. 1947, § 82-2135; Acts 1987, No. 607, § 1.

20-64-605. Acts 1977, No. 644, § 4; A.S.A. 1947, § 82-2135.

SUBCHAPTER 7 — ALCOHOLICS

SECTION.

20-64-701. Legislative findings.

20-64-702. Definitions.

20-64-703. Construction.

20-64-704. Bureau of Alcohol and Drug Abuse Prevention — Powers and duties.

20-64-705. Bureau of Alcohol and Drug Abuse Prevention — Power to accept gifts.

SECTION.

20-64-706. Bureau of Alcohol and Drug Abuse Prevention — Rules and regulations.

20-64-707. Bureau of Alcohol and Drug Abuse Prevention — Cooperation by other departments.

20-64-708 — 20-64-716. [Repealed.]

Cross References. Fund to pay defense costs for indigents, § 14-20-102.

Title XX Social Security Funds, § 19-7-701 et seq.

Effective Dates. Acts 1955, No. 411, § 20: approved Mar. 29, 1955. Emergency clause provided: "Because Arkansas does not have a central coordinating agency to better use existing services of the State for education about and prevention of alcoholism; because the State's facilities are not adequate to treat and rehabilitate alcoholics; because alcoholism is an extremely important public, social, health and economic problem; and because the problems of alcoholism are of major importance to the nation as a whole, an emergency and an imperative public necessity are hereby declared to exist, and this act shall take effect and be in force from and after its passage, and it is so enacted."

Acts 1961, No. 177, § 2: Mar. 6, 1961. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present laws are inadequate to give the Alcoholism Commission

proper discretion in coping with alcoholics who are refusing or failing to respond to treatment, and that only by the immediate passage of this act may such authority be granted the Alcoholism Commission. Therefore, an emergency is hereby declared to exist and this Act, being immediately necessary for the preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1971, No. 203, § 3: approved Mar. 2, 1971. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the long period of time that elapses between the filing of a petition against an alleged alcoholic and the hearing date is seriously jeopardizing the physical well-being of many residents of the State of Arkansas and that the hearing date should be reduced in order that the rights and welfare of the alleged alcoholic will be fully protected. Therefore, an emergency is declared to exist and this Act being necessary for the preservation of the pub-

lic peace, health and safety shall be in full force and effect from and after its passage."

RESEARCH REFERENCES

ALR. Applicability and application of zoning regulations to single residences employed for group living of mentally retarded persons, 32 ALR4th 1018.

Alcoholism as ground for discharge justifying denial of unemployment benefits. 64 ALR 4th 1151.

What constitutes handicap under state

legislation forbidding job discrimination on account of handicap. 82 ALR 4th 26.

Misconduct involving intoxication as ground for disciplinary action against attorney. 1 ALR 5th 874.

UALR L.J. Sallings, Survey of Arkansas Laws, 3 UALR L.J. 277.

CASE NOTES

Cited: Burr v. Pryor, 468 F. Supp. 1314 (E.D. Ark. 1979).

20-64-701. Legislative findings.

(a) The purpose of this subchapter is to help prevent broken homes and the loss of life, health, money, and property by creating an agency which shall coordinate the efforts of all interested and affected state and local agencies; develop educational and preventative programs; promote and aid study and research relating to problems of alcoholism; and promote the establishment of constructive programs for treatment aimed at the reclamation and rehabilitation of alcoholics.

(b) Alcoholism is recognized as an illness and a public health problem affecting the general welfare and economy of the state and, as an illness, is subject to treatment and abatement.

(c) The sufferer of alcoholism is recognized as one worthy of treatment and rehabilitation.

(d) The need for proper and sufficient facilities, programs, and procedures within the state for the study, control, and treatment of alcoholism is recognized.

(e) It is contemplated and intended that this subchapter shall not become involved with or become a vehicle for either the commonly called "dry" or "wet" movements, for it is recognized that alcoholism is a problem irrespective of any laws relating to the manufacture, sale, or consumption of alcoholic beverages.

(f) It is declared that the procedure for commitment of alcoholics, as provided for in this subchapter, is not punitive but is a committal for treatment of an illness affecting not only the individual involved but also the public welfare.

History. Acts 1955, No. 411, § 1; A.S.A. 1947, § 83-701.

Publisher's Notes. The provisions of

this subchapter were originally administered by the Arkansas Commission on Alcoholism. However, Acts 1973, No. 50

abolished the Arkansas Commission on Alcoholism and transferred its duties to the Office on Alcohol Abuse and Alcoholism. Acts 1977, No. 644, abolished the

Office on Alcohol Abuse and Alcoholism and transferred its duties to the Division of Alcohol and Drug Abuse Prevention.

20-64-702. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Alcoholic" means any person who chronically and habitually uses alcoholic beverages to the extent that the person has lost the power of self-control with respect to the use of such beverages, or who while chronically and habitually under the influence of alcoholic beverages endangers public morals, health, safety, or welfare;

(2) "Alcoholic beverages" includes alcoholic spirits, liquors, wines, beer, and every liquid or fluid containing alcohol which is capable of being consumed by human beings and produces intoxication in any form or in any degree;

(3) "Alcoholism" has reference to any condition of abnormal behavior or illness resulting directly or indirectly from the chronic and habitual use of alcoholic beverages;

(4) "Bureau" means the Bureau of Alcohol and Drug Abuse Prevention; and

(5) "Hospital board" means the Department of Human Services State Institutional System Board.

History. Acts 1955, No. 411, § 3;
A.S.A. 1947, § 83-703.

20-64-703. Construction.

This subchapter shall be liberally construed to accomplish the purposes sought in it.

History. Acts 1955, No. 411, § 2;
A.S.A. 1947, § 83-702.

20-64-704. Bureau of Alcohol and Drug Abuse Prevention — Powers and duties.

The Bureau of Alcohol and Drug Abuse Prevention shall have the following duties and functions:

(1) Carry on a continuing study of the problems of alcoholism in this state and seek to focus public attention on the problems;

(2) Establish cooperative relationships with other state and local agencies, hospitals, clinics, public health, welfare, and law enforcement authorities, educational and medical agencies and organizations, and other related public and private groups;

(3) Promote or conduct educational programs on alcoholism, purchase and provide books, films, and other educational material, furnish funds or grants to the Department of Education, institutions of higher education, and medical schools for study and research, and modernize instruction regarding the problems of alcoholism;

(4) Provide for treatment and rehabilitation of alcoholics and allocate funds for:

(A) The establishment of local alcoholic clinics, with or without short-term hospitalization facilities, by providing funds for not to exceed seventy-five percent (75%) of the total operating cost of the clinics operated by a city or a county;

(B) Providing treatment for those alcoholics needing from five (5) to ninety (90) days' hospitalization, whether voluntary patients or those admitted on court order, by furnishing the Department of Human Services State Institutional System Board all of the funds needed for the proper operation of segregated wards for treatment of the patients. The funds and necessary personnel shall be in addition to all funds and personnel provided the hospital board in the regular departmental appropriation bill;

(C) Contracting with hospitals or institutions not under its control for the care, custody, and treatment of alcoholics;

(D) Providing for the detention, care, and treatment of recalcitrant alcoholics and alcoholics with long police court records, by furnishing funds for the operation of farm or colony-type facilities under the provisions of subdivision (4)(A) or (B) of this section;

(5) While the bureau necessarily must, and does, have discretion as to proportions in which it allocates funds to the various aspects of this problem, it is contemplated and intended that the bureau shall make every reasonable effort not to concentrate too largely on any one (1) phase of the problem at the expense or detriment of other phases. For example, but not limited to, the following phases:

(A) That research should not be retarded because of funds directed to treatment, and vice versa;

(B) That treatment should not be retarded because of funds directed to rehabilitation, and vice versa; and

(C) That rehabilitation should not be retarded because of funds directed to research, and vice versa.

History. Acts 1955, No. 411, § 5;
A.S.A. 1947, § 83-705.

20-64-705. Bureau of Alcohol and Drug Abuse Prevention — Power to accept gifts.

(a)(1) The deputy director, on behalf of the bureau, may receive any federal means, grants, contributions, gifts, and loans which are payable or distributable to the State of Arkansas by the United States or any of its agencies or instrumentalities, under any existing or future federal laws or statutes or rules or regulations of the agencies or instrumentalities, received for or on account of any of the functions performable by the bureau.

(2) The bureau may also receive gifts, grants, donations, fees, conveyances, or transfers of money and property, both real and personal,

from private and public sources, to effectuate the purposes of this subchapter.

(b) The deputy director, on behalf of the bureau, shall sell or dispose of such real or personal property as the bureau deems advisable, upon specific authorization of the bureau.

(c) Any funds and income from any property so furnished or transferred to the deputy director on behalf of the bureau shall be placed in the State Treasury in a special fund called the Alcohol and Drug Abuse Prevention Fund Account and expended in the same manner as other state moneys are expended, upon warrants drawn by the comptroller upon the order of the bureau.

(d) Any of the moneys, funds, and property described in this section are appropriated for the purpose of carrying out the provisions of this subchapter.

History. Acts 1955, No. 411, § 7;
A.S.A. 1947, § 83-707.

20-64-706. Bureau of Alcohol and Drug Abuse Prevention — Rules and regulations.

The Bureau of Alcohol and Drug Abuse Prevention shall be responsible for the adoption of all policies and shall make all rules and regulations appropriate to the proper accomplishment of its functions under this subchapter and to the allocation of its funds.

History. Acts 1955, No. 411, § 8;
A.S.A. 1947, § 83-708.

20-64-707. Bureau of Alcohol and Drug Abuse Prevention — Cooperation by other departments.

(a) To effectuate the purpose of this subchapter and to make maximum use of existing facilities and personnel, it shall be the duty of all departments and agencies of the state government and all officers and employees of the state, when requested by the Bureau of Alcohol and Drug Abuse Prevention, to cooperate with it in all activities consistent with their proper respective functions.

(b) Nothing in this section shall be construed as giving the bureau control over existing facilities, institutions, or agencies, or as requiring the facilities, institutions, or agencies to serve the bureau inconsistently with their respective functions, or with the authority of their respective offices, or with the laws and regulations governing their respective activities, or as giving the bureau power to make use of any private institution or agency without the consent of the private institution or agency, or to pay a private institution or agency for services which a public institution or agency is willing and able to perform adequately.

History. Acts 1955, No. 411, § 6;
A.S.A. 1947, § 83-706.

20-64-708 — 20-64-716. [Repealed.]

Publisher's Notes. These sections, concerning treatment of alcoholics, were repealed by Acts 1989 (3rd Ex. Sess.), No. 10, § 24. They were derived from the following sources:

20-64-708. Acts 1955, No. 411, § 9; 1965, No. 485, § 1; 1971, No. 203, § 1; A.S.A. 1947, § 83-709.

20-64-709. Acts 1955, No. 411, § 12; A.S.A. 1947, § 83-712.

20-64-710. Acts 1955, No. 411, § 17; A.S.A. 1947, § 83-717.

20-64-711. Acts 1955, No. 411, § 10; A.S.A. 1947, § 83-710.

20-64-712. Acts 1955, No. 411, § 11; A.S.A. 1947, § 83-711.

20-64-713. Acts 1955, No. 411, § 13; A.S.A. 1947, § 83-713.

20-64-714. Acts 1955, No. 411, § 14; 1961, No. 177, § 1; A.S.A. 1947, § 83-714.

20-64-715. Acts 1955, No. 411, § 15; A.S.A. 1947, § 83-715.

20-64-716. Acts 1955, No. 411, § 16; A.S.A. 1947, § 83-716.

For present law, see subchapter 8 of this chapter.

SUBCHAPTER 8 — ALCOHOL OR DRUG ADDICTS

SECTION.

20-64-801. Definitions.

20-64-802. Jurisdiction.

20-64-803. Civil immunity.

20-64-804. Habeas corpus.

20-64-805. Inspections — Procedures.

20-64-806 — 20-64-809. [Reserved.]

20-64-810. Voluntary admissions.

20-64-811. Continued detention.

20-64-812. Absence from treatment facility or program.

20-64-813, 20-64-814. [Reserved.]

20-64-815. Petition for involuntary commitment.

20-64-816. Petition for immediate detention.

20-64-817. Statement of rights.

SECTION.

20-64-818, 20-64-819. [Reserved.]

20-64-820. Appointment of counsel.

20-64-821. Initial hearing — Determination — Evaluation.

20-64-822. Pleadings — Involuntary commitment.

20-64-823. Filing of petition — Legal representation.

20-64-824. Additional commitment.

20-64-825. Voluntary status.

20-64-826. Early release.

20-64-827. Appeals.

20-64-828. Presumption of competency.

20-64-829. False statements — Penalty.

20-64-830. Liability for treatment — Rules.

Publisher's Notes. Acts 1971, No. 433, § 1, provided: "It is hereby found and determined by the General Assembly that the laws relating to the State Hospital, mental health, and mentally ill persons have been enacted piecemeal over a period of many years and that a great number of these laws are duplicating, conflicting, outmoded, and in urgent need of clarification and codification. It is the purpose and intent of the General Assembly in enacting this Act to clarify, update, and codify the various laws of the State relating to

the State Hospital, mental health, and mentally ill persons."

Acts 1971, No. 433, ch. 10, § 1, provided: "It is the specific intent of the codification of the mental health laws contained in this Act to only effect those laws pertaining to mental health. Nothing in this Act shall be deemed to repeal or modify the provisions of Act 411 of 1955. No other laws shall be affected in any manner, nor shall the inclusion of such laws within this code in any way repeal or affect those laws as they otherwise apply."

Former subchapter 8, concerning drug addicts, was repealed by Acts 1989 (3rd Ex. Sess.), No. 10, § 23. The former subchapter was derived from the following sources:

- 20-64-801. Acts 1971, No. 433, ch. 4, § 1; A.S.A. 1947, § 59-901.
- 20-64-802. Acts 1965, No. 64, § 2; 1979, No. 898, § 16; A.S.A. 1947, § 82-1052.
- 20-64-803. Acts 1971, No. 433, ch. 4, § 3; A.S.A. 1947, § 59-903.
- 20-64-804. Acts 1971, No. 433, ch. 4, § 4; A.S.A. 1947, § 59-904.
- 20-64-805. Acts 1971, No. 433, ch. 4, § 5; A.S.A. 1947, § 59-905.
- 20-64-806. Acts 1971, No. 433, ch. 4, § 7; A.S.A. 1947, § 59-907.
- 20-64-807. Acts 1971, No. 433, ch. 4, § 6; A.S.A. 1947, § 59-906.
- 20-64-808. Acts 1971, No. 433, ch. 4, § 7; A.S.A. 1947, § 59-907.
- 20-64-809. Acts 1971, No. 433, ch. 4, § 8; A.S.A. 1947, § 59-908.
- 20-64-810. Acts 1971, No. 433, ch. 4, § 9; A.S.A. 1947, § 59-909.
- 20-64-811. Acts 1971, No. 433, ch. 4, § 10; A.S.A. 1947, § 59-910.

Acts 1989 (3rd Ex. Sess.), No. 10, § 27, provided: "The various provisions and parts of this Act are declared severable and if any section or part of a section, provision or part of a provision, herein is declared unconstitutional, inappropriate or invalid by any court of competent jurisdiction, such holding shall not invalidate or effect the remainder of the Act."

Effective Dates. Acts 1989 (3rd Ex. Sess.), No. 10, § 28: Nov. 6, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the present laws concerning commitment of persons addicted to alcohol or drugs are in need of revision. It is further found that for the effective administration of this Act, this Act should become effective immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

RESEARCH REFERENCES

ALR. Liability of physician for prescribing drug to known drug addict. 42 ALR 4th 586.

Prosecution of mother for prenatal substance abuse based on endangerment of or delivery of controlled substance to the child. 70 ALR 5th 461.

Am. Jur. 25 Am. Jur. 2d, Drugs, § 249.

C.J.S. 14 C.J.S., Chemical Dependents, §§ 10-20.

UALR L.J. Survey, Civil Procedure, 12 UALR L.J. 603.

20-64-801. Definitions.

As used in this subchapter:

(1) "Administrator" refers to the chief administrative officer or executive director of any private or public facility or program designated as a receiving facility or program by the Bureau of Alcohol and Drug Abuse Prevention;

(2) "Bureau" refers to the Bureau of Alcohol and Drug Abuse Prevention of the Department of Health;

(3) "Detention" refers to any confinement of a person against his or her wishes and begins either:

(A) When a person is involuntarily brought to a receiving facility or program;

(B) When the person appears for the initial hearing; or

(C) When a person on a voluntary admission is in a receiving facility or program pursuant to § 20-64-810;

(4) "Evaluation" means an assessment prepared by a receiving facility to include a description of the existence and extent of the person's addiction to alcohol or drugs;

(5) "Gravely disabled" refers to a person who, if allowed to remain at liberty, is substantially likely, by reason of addiction to alcohol or other drugs, to physically harm himself or herself or others as a result of inability to make a rational decision to receive medication or treatment, as evidenced by:

(A) Inability to provide for his or her own food, clothes, medication, medical care, or shelter;

(B) An inability to avoid or protect himself or herself from severe impairment or injury without treatment; or

(C) Placement of others in a reasonable fear of violent behavior or serious physical harm to them;

(6) "Homicidal" refers to a person who is addicted to alcohol or drugs and poses a significant risk of physical harm to others as manifested by recent overt behavior evidencing homicidal or other violent assaultive tendencies;

(7) "Person" shall mean a citizen of the State of Arkansas who is eighteen (18) years of age or older;

(8) "Receiving facility or program" refers to a residential, inpatient, or outpatient treatment facility or program which is designated within each geographical area of the state by the bureau to accept the responsibility for care, custody, and treatment of persons voluntarily admitted or involuntarily committed to the facility or program; and

(9) "Suicidal" refers to a person who is addicted to alcohol or other drugs and by reason thereof poses a substantial risk to himself or herself as manifested by evidence of, threats of, or attempts at suicide or serious self-inflicted bodily harm, or by evidence of other behavior or thoughts that create a grave and imminent risk to his or her physical condition.

History. Acts 1989 (3rd Ex. Sess.), No. 10, § 1; 1991, No. 150, § 1; 1995, No. 1268, § 1.

20-64-802. Jurisdiction.

The probate courts of this state shall have exclusive jurisdiction for the involuntary commitment procedures initiated pursuant to this subchapter. The probate judge may conduct hearings pursuant to this subchapter in a receiving facility or program where the person is detained or residing at the Arkansas State Hospital or within any county of his judicial district.

History. Acts 1989 (3rd Ex. Sess.), No. 10, § 2.

20-64-803. Civil immunity.

The prosecuting attorney, deputy prosecuting attorneys, the Office of the Prosecutor Coordinator, law enforcement officers, governing boards of the Bureau of Alcohol and Drug Abuse Prevention, employees of the bureau, governing boards of designated receiving facilities, and employees of designated receiving facilities and programs shall be immune from civil liability for performance of duties imposed by this subchapter.

History. Acts 1989 (3rd Ex. Sess.), No. 10, § 19; 1995, No. 1268, § 2; 1997, No. 1246, § 1.

Amendments. The 1997 amendment substituted "deputy prosecuting attor-

neys" for "prosecutor coordinator," and inserted "the Office of the Prosecutor Coordinator," "governing boards of the bureau," and "governing boards of designated receiving facilities."

20-64-804. Habeas corpus.

Nothing in this subchapter shall in any way restrict the right of any person to attempt to secure his or her freedom by a habeas corpus proceeding as provided by current Arkansas law.

History. Acts 1989 (3rd Ex. Sess.), No. 10, § 20.

20-64-805. Inspections — Procedures.

(a) To assure compliance with this subchapter, the Bureau of Alcohol and Drug Abuse Prevention, through its authorized agents, may visit or investigate any receiving program or facility to which persons are admitted or committed under this subchapter.

(b) The bureau shall promulgate written procedures to implement this subchapter on or before July 1, 1995. The provisions shall:

(1) Designate receiving facilities and programs within prescribed geographical areas of the state for purposes of voluntary admissions or involuntary commitments under this subchapter; and

(2) Establish ongoing mechanisms, guidelines, and regulations for review and refinement of the treatment programs offered in the receiving facilities and programs for alcohol and other drug abuse throughout this state.

History. Acts 1989 (3rd Ex. Sess.), No. 10, § 21; 1995, No. 1268, § 3.

20-64-806 — 20-64-809. [Reserved.]**20-64-810. Voluntary admissions.**

Any person who believes himself or herself to be addicted to alcohol or other drugs may apply to the administrator or his or her designee of a receiving facility or program for admission. If the administrator or his or her designee shall be satisfied after examination of the applicant that he or she is in need of treatment and will be benefited thereby, the

applicant may be received and cared for in the receiving facility or program for such a period of time as the administrator or his or her designee shall deem necessary for the recovery and improvement of the person, provided that the person agrees at all times to remain in the receiving facility or program.

History. Acts 1989 (3rd Ex. Sess.), No. 10, § 3; 1995, No. 1268, § 4.

20-64-811. Continued detention.

(a) If at any time the person who has voluntarily admitted himself or herself to a receiving facility or program makes a request to leave, the administrator or his or her designee may file or cause to be filed a petition for involuntary commitment.

(b) If the administrator or his or her designee determines that the person meets the criteria set forth in this subchapter for involuntary commitment and that release would place the person in imminent danger of death or serious bodily harm, the administrator or his or her designee shall file or cause to be filed a petition for involuntary commitment and shall append thereto a request for continued detention.

(c) The request for continued detention shall be verified and shall:

(1) State with particularity the facts personally known to the affiant which establish reasonable cause to believe the person is in imminent danger of death or serious bodily harm;

(2) Identify the treatment facility or program in which the person is being detained; and

(3) Contain a specific prayer that the person be involuntarily committed and that detention be continued.

(d)(1) The person shall be considered to be held by detention pending judicial determination of the petition for involuntary commitment and continued detention. Any person detained pending judicial determination shall, within two (2) hours of his or her request to leave the receiving facility, be provided with a copy of the petition for involuntary commitment and request for continued detention.

(2) The person shall be presented with an acknowledgment of receipt of the petition for involuntary commitment and request for continued detention. If the person refuses to sign the acknowledgment, this refusal shall be noted on the person's chart and shall be attested by two (2) eyewitnesses on a second document. An original of said attestation shall be furnished to the court. Either a signed acknowledgment or completed attestation shall be sufficient to prove personal service of the petition.

(e) The petition shall be filed and presented to a probate judge on or before 5:00 p.m. the next day, exclusive of weekends and holidays, after the person makes a request to leave the receiving facility or program. Thereupon, the judge shall review the petition and request for continued detention and determine whether there is reasonable cause to

believe the person meets the criteria set forth in this subchapter for involuntary commitment and whether release would place the person in immediate danger of death or serious bodily harm.

(f) If the judge determines that there is reasonable cause to believe that the person meets the criteria set forth in this subchapter for involuntary commitment and that release would place the person in immediate danger of death or serious bodily harm, the judge shall order continued detention pending a hearing to be scheduled and conducted pursuant to § 20-64-821.

History. Acts 1989 (3rd Ex. Sess.), No. 10, § 4.

20-64-812. Absence from treatment facility or program.

(a)(1) Treatment staff shall immediately inform the prosecuting attorney of the county where the treatment facility or program is located if, in the opinion of the treatment staff, a person who voluntarily admitted himself or herself meets the criteria for involuntary commitment set forth in this subchapter and the person has absented himself or herself from the receiving facility or program.

(2) The prosecuting attorney shall initiate an involuntary commitment under this subchapter against the person.

(3)(A) Statements made by the prosecuting attorney in furtherance of the petition shall not be deemed to be a disclosure.

(B) Statements made by the treating staff to the prosecuting attorney shall be treated as confidential, and the prosecuting attorney shall remain subject to the confidentiality requirements as set forth in state and federal law and regulations.

(b) If any person shall, during a period of involuntary commitment, absent himself or herself from the treating facility or program without leave, he or she may be returned by facility or program security personnel or law enforcement officers without further proceedings. The probate courts of this state are hereby authorized to enter such orders as may be necessary to effect the return.

History. Acts 1989 (3rd Ex. Sess.), No. 10, § 5; 1995, No. 1268, § 5.

20-64-813, 20-64-814. [Reserved.]

20-64-815. Petition for involuntary commitment.

(a) Any person having any reason to believe that a person is homicidal, suicidal, or gravely disabled may file a petition with the clerk of the probate court of the county in which the person alleged to be addicted to alcohol or other drugs resides or is detained and be represented by the prosecuting attorney or by any other licensed attorney within the State of Arkansas.

(b) The petition for involuntary commitment shall:

(1) State whether the person is believed to be homicidal, suicidal, or gravely disabled;

(2) Describe the conduct, signs, and symptoms upon which the petition is based. The descriptions shall be limited to facts within the petitioner's personal knowledge;

(3) Contain the names and addresses of any witnesses having knowledge relevant to the allegations contained in the petition; and

(4) Contain a specific prayer for commitment of the person to an appropriate designated receiving facility or program, including residential inpatient or outpatient treatment for his or her addiction to alcohol or other drugs.

(c) Personal service of the petition shall be made in accordance with the Arkansas Rules of Civil Procedure and shall include:

(1) A notice of the date, time, and place of hearing; and

(2) A notice that if the person shall fail to appear, the court shall issue an order directing a law enforcement officer to place the person in custody for the purpose of a hearing unless the court finds that the person is unable to appear by reason of physical infirmity or that the appearance would be detrimental to his or her health, well-being, or treatment.

History. Acts 1989 (3rd Ex. Sess.), No. 10, § 6; 1995, No. 1268, § 6; 1997, No. 1246, § 2.

Amendments. The 1997 amendment deleted "clinical" preceding "signs" in the first sentence in (b)(2).

20-64-816. Petition for immediate detention.

(a) Any person filing a petition for involuntary commitment may append thereto a petition for immediate detention.

(b) The request for immediate detention shall be verified and shall:

(1) State with particularity facts personally known to the affiant which establish reasonable cause to believe the person is in imminent danger of death or serious bodily harm;

(2) State whether the person is currently detained in a designated receiving facility or program; and

(3) Contain a specific prayer that the person be immediately detained at a designated receiving facility or program pending a hearing.

(c) If, based on the petition for involuntary commitment and request for immediate confinement, the judge finds a reasonable cause to believe the person meets the criteria set forth in this subchapter for involuntary commitment and that the person is in imminent danger of death or serious bodily harm, the court may grant the request and order a law enforcement officer to place the person in immediate detention at a designated receiving facility or program for treatment pending a hearing to be scheduled and conducted pursuant to § 20-64-821.

(d) Personal service of the petition and order of immediate detention must be made by a law enforcement officer, who shall, at the time of service, take the person into custody and immediately deliver such person to a designated receiving facility or program.

History. Acts 1989 (3rd Ex. Sess.), No. 10, § 7; 1991, No. 150, § 2; 1995, No. 1268, § 7; 1997, No. 1246, § 3.

deleted “the Benton Detoxification Service Center or” preceding “a designated receiving facility” in (c) and (d).

Amendments. The 1997 amendment

20-64-817. Statement of rights.

Every petition for involuntary commitment shall include or contain as an attachment the following statement of rights:

(1) That the person has the right to effective assistance of counsel, including the right to a court-appointed attorney;

(2) That the person and his or her attorney have the right to be present at all significant stages of the proceedings and at all hearings, except that no attorney shall be entitled to be present upon examination of the person by the treatment staff for the purpose of evaluation or treatment;

(3) That the person has the right to present evidence in his or her own behalf and cross-examine witnesses who testify against him or her;

(4) That the person has the right to remain silent; and

(5) That the person has a right to view and copy all petitions, reports, and documents contained in the court file.

History. Acts 1989 (3rd Ex. Sess.), No. 10, § 8.

20-64-818, 20-64-819. [Reserved.]

20-64-820. Appointment of counsel.

(a) If it appears to the court that a person sought to be committed is in need of counsel, counsel shall be appointed immediately upon filing of the petition. Whenever legal counsel is appointed by the court, such court shall determine the amount of the fee, if any, to be paid the attorney so appointed and shall issue an order directing the payment. The amount allowed shall not exceed one hundred fifty dollars (\$150) based upon the time and effort of the attorney and the investigation, preparation, and representation of the client at the court hearings. The court shall have the authority to appoint counsel on a pro bono basis.

(b) The quorum court of each county shall appropriate funds for the purpose of payment of the attorney’s fees provided for by this subchapter and upon presentment of a claim accompanied by an order of the probate court fixing the fee, the same shall be approved by the county quorum court and shall be paid in the same manner as other claims against the county are paid.

History. Acts 1989 (3rd Ex. Sess.), No. 10, § 9.

20-64-821. Initial hearing — Determination — Evaluation.

(a) In each case a hearing shall be set by the court within five (5) days, excluding weekends and holidays, of the filing of a petition for involuntary commitment, with a request for continued detention or for involuntary commitment with a request for immediate detention.

(b) The person named in the original petition may be removed from the presence of the court upon finding that his or her conduct before the court is so disruptive that proceedings cannot be reasonably continued with him or her present.

(c) The petitioner shall appear before the probate judge to substantiate the petition. The court shall make a determination based upon clear and convincing evidence that the standards for involuntary commitment apply to the person. If such a determination is made, the person shall be remanded to a designated agent of the Bureau of Alcohol and Drug Abuse Prevention or the designated receiving facility for treatment for a period of up to twenty-one (21) days.

(d) Every person remanded for treatment shall have an evaluation within forty-eight (48) hours of detention.

(e) A copy of the court order committing the person to the designated receiving facility for treatment shall be forwarded to the designated receiving facility within five (5) working days.

History. Acts 1989 (3rd Ex. Sess.), No. 10, § 10; 1991, No. 150, § 3; 1997, No. 1246, § 4.

Amendments. The 1997 amendment substituted "Bureau of Alcohol and Drug

Abuse Prevention or the designated receiving facility" for "division" in the second sentence in (c); substituted "forty-eight (48) hours" for "twenty-four (24) hours" in (d); and added (e).

20-64-822. Pleadings — Involuntary commitment.

The pleadings in each case shall be deemed to conform to the proof. The court is hereby authorized to enter orders of involuntary commitment pursuant to § 20-47-201 et seq., conforming thereto.

History. Acts 1989 (3rd Ex. Sess.), No. 10, § 11.

20-64-823. Filing of petition — Legal representation.

The petition may be filed by the local prosecuting attorney, an attorney representing the petitioner, or pro se. The county shall establish an indigency fund to permit the petitioner to request a court-appointed attorney by filing an affidavit of indigency. The attorney may be allowed a fee of up to one hundred fifty dollars (\$150). Should the probate court designate a probate judge in Pulaski County, Arkansas, to hear petitions filed for additional periods of commitment pursuant to this subchapter, the Office of Prosecutor Coordinator shall appear for and on behalf of the petitioner and the State of Arkansas before the judge, provided that the hearing is held on the grounds of the Arkansas State Hospital at Little Rock. The representation shall be a

part of the official duties of the Prosecutor Coordinator. However, nothing in this section shall prevent the petitioner from retaining his or her own counsel. Thereupon, the Prosecutor Coordinator shall be relieved of the duty to represent the petitioner.

History. Acts 1989 (3rd Ex. Sess.), No. 10, § 15.

20-64-824. Additional commitment.

(a) An additional forty-five-day commitment order may be requested if in the opinion of the treatment staff a person remains suicidal, homicidal, or gravely disabled.

(b)(1)(A) Any request for periods of additional commitment pursuant to this section shall be made by a petition verified by the receiving facility treatment staff.

(B) The petition shall set forth facts and circumstances forming the basis for the request.

(2) Upon the filing of the petition for additional commitment, all rights enumerated in § 20-64-817 shall be applicable.

(c)(1)(A) A hearing on the petition for additional commitment pursuant to this section shall be held before the expiration of the period of confinement.

(B) The hearing may be held in a receiving facility or program where the person is detained or residing.

(2) A copy of the petition shall be served upon the person sought to be additionally committed, along with a copy forwarded to any attorney who may have represented or may have been appointed to represent the person at the initial hearing.

(d) All testimony shall be recorded under oath and preserved.

(e) The need for additional commitment shall be proven by clear and convincing evidence.

History. Acts 1989 (3rd Ex. Sess.), No. 10, § 13; 1997, No. 1246, § 5. inserted "receiving facility" in the first sentence in (b).

Amendments. The 1997 amendment

20-64-825. Voluntary status.

(a) At any time during detention, the person may be converted to voluntary status if the person's certified substance abuse counselor files a written statement of consent with the court. The court shall dismiss the petition immediately upon the filing of said statement.

(b) If, upon evaluation, the certified substance abuse counselor determines that the person is not addicted to alcohol or drugs or would benefit by an alternative method of treatment, the counselor shall file a copy of the evaluation with the court along with a request for amendment of the court's order of detention.

History. Acts 1989 (3rd Ex. Sess.), No. 10, § 12; 1991, No. 150, § 4.

20-64-826. Early release.

(a) If any person is released from detention prior to the expiration of the period of commitment, the court may condition the release upon the person's compliance with outpatient treatment for the time not to exceed the duration of the commitment order and at the facility as may be specified by the court.

(b) When in the opinion of the professional person in charge of the program providing involuntary treatment under this chapter, the committed patient can be appropriately served by less restrictive treatment before expiration of the period of commitment, then the less restrictive care may be provided.

History. Acts 1989 (3rd Ex. Sess.), No. 10, § 14; 1997, No. 1246, § 6.

Amendments. The 1997 amendment added (b).

20-64-827. Appeals.

All commitment orders authorized herein shall be considered final and appealable under Rule 2 of the Arkansas Rules of Appellate Procedure.

History. Acts 1989 (3rd Ex. Sess.), No. 10, § 17.

20-64-828. Presumption of competency.

No person admitted voluntarily or committed involuntarily to a receiving facility or program under this subchapter shall be considered incompetent per se by virtue of the admission or commitment.

History. Acts 1989 (3rd Ex. Sess.), No. 10, § 16.

20-64-829. False statements — Penalty.

Any person willfully making false statements on a petition for involuntary commitment, petition for involuntary commitment with request for continued detention, or petition for involuntary commitment with request for immediate detention, or who willfully makes false statements for the purpose of inducing another to bring such a petition, knowing the statements to be false, or with reckless disregard as to the truthfulness of the statements shall be guilty of a Class A misdemeanor.

History. Acts 1989 (3rd Ex. Sess.), No. 10, § 18.

20-64-830. Liability for treatment — Rules.

(a)(1) Any person legally obligated to support a person in treatment from a receiving facility or program shall pay to the facility or program an amount to be fixed by the facility or program as the cost for treatment.

(2) The amounts shall be a debt of the obligor.

(b)(1) The Bureau of Alcohol and Drug Abuse Prevention shall promulgate rules specifying the amounts to be fixed as costs and establishing procedures for implementation of this section.

(2) The rules shall set forth costs by reference to the income and assets of the obligor.

History. Acts 1989 (3rd Ex. Sess.), No. 10, § 22; 1995, No. 1268, § 8.

SUBCHAPTER 9 — ALCOHOL AND DRUG ABUSE TREATMENT PROGRAM LICENSING

SECTION.

- 20-64-901. Purpose.
- 20-64-902. Definition.
- 20-64-903. Authority — Exemptions —
Current programs.
- 20-64-904. Penalties.

SECTION.

- 20-64-905. Renewal.
- 20-64-906. Disposition of funds.
- 20-64-907. Reporting requirements.
- 20-64-908. Appeal process.
- 20-64-909. Penalties.

A.C.R.C. Notes. Acts 1989, No. 597, § 8, provided: "Any person, partnership, association, or corporation establishing, conducting, managing, or operating any alcohol and drug abuse treatment program in Arkansas, and not exempted by the terms of this act, shall have one year from the date of passage of this act to complete the requirements for accreditation by the Division of Alcohol and Drug Abuse Prevention."

The Alcohol and Drug Abuse Authority was transferred by Acts 1995, No. 551, § 5 to the Arkansas Alcohol and Drug Abuse Coordinating Council pursuant to a type 3 transfer as defined in § 25-2-106.

Publisher's Notes. Former subchapter 9, concerning accreditation of treatment programs, was repealed by Acts 1995, No. 173, § 13. The former sections were derived from the following sources:

- 20-64-901. Acts 1989, No. 597, § 1.
- 20-64-902. Acts 1989, No. 597, § 2.

- 20-64-903. Acts 1989, No. 597, §§ 2, 9.
- 20-64-904. Acts 1989, No. 597, § 6.
- 20-64-905. Acts 1989, No. 597, § 4.
- 20-64-906. Acts 1989, No. 597, § 3.
- 20-64-907. Acts 1989, No. 597, § 7.
- 20-64-908. Acts 1989, No. 597, § 5.
- 20-64-909. Acts 1991, No. 25, § 1.

Effective Dates. Acts 1995, No. 1032, § 13: July 1, 1995. Emergency clause provided: "It is hereby found and determined by the Eightieth General Assembly, that in order for the Department of Health to become more efficient in accounting and budgetary practices due to the transfer of the Bureau of Alcohol and Drug Abuse Prevention, changes in various funds are needed; and that the provisions of this Act provide such changes. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1995."

20-64-901. Purpose.

The purpose of this subchapter is to require all persons, partnerships, associations, or corporations holding themselves out to the public as an alcohol and drug abuse treatment program in the State of Arkansas to meet the licensure standards set by the Bureau of Alcohol and Drug Abuse Prevention, unless expressly exempted by this subchapter.

History. Acts 1995, No. 173, § 1.

20-64-902. Definition.

An "alcohol and drug abuse treatment program" is a program that renders or offers to render to a person or group of persons any service that assists the person or group to develop an understanding of alcoholism and drug dependency problems and to define goals and plan courses of action reflecting the person's or group's interests, abilities, and needs as affected by alcoholism and drug dependency problems. The definition includes actions taken with the intent of the cessation of harmful or addictive use of alcohol or other drugs. It includes, but is not restricted to, one (1) or more of the following:

- (A) Counseling with individuals, families, or groups;
- (B) Helping persons or families obtain other services appropriate to alcoholism and drug abuse rehabilitation; and
- (C) Engaging in alcoholism and drug abuse research, education, or prevention through the administration of alcoholism and drug abuse counseling.

History. Acts 1995, No. 173, § 2.

20-64-903. Authority — Exemptions — Current programs.

(a)(1) The Bureau of Alcohol and Drug Abuse Prevention is vested with the authority and duty to establish and promulgate rules for the licensure of alcohol and drug abuse treatment programs in Arkansas.

(2) All persons, partnerships, associations, or corporations establishing, conducting, managing, or operating and holding themselves out to the public as alcohol, drug, or alcohol and drug abuse treatment programs must be licensed by the bureau.

(3) No person, partnership, association, or corporation will be allowed to receive federal or state funds for treatment services until it has received a license.

(b) The following programs and persons are exempted from the requirements of this subchapter:

(1) Acute care, hospital-based alcohol and drug abuse treatment programs governed by §§ 20-9-201 and 20-10-213;

(2) Members of the clergy, Christian Science practitioners, and licensed professionals such as physicians, nurses, psychologists, counselors, social workers, psychological examiners, school counselors, substance abuse counselors, and attorneys working within the standards of their respective professions;

(3) Programs meeting the alcohol and drug abuse treatment program standards of the Joint Commission on Accreditation of Health Care Organizations or the Commission on Accreditation of Rehabilitation Facilities will automatically receive bureau licensure as licensed alcohol and drug abuse treatment programs, and the license shall be awarded by the bureau upon presentation by the program of evidence of accreditation by the Joint Commission on Accreditation of Health Care Organizations or the Commission on Accreditation of Rehabilitation Facilities. This subdivision (b)(3) does not apply to methadone and alpha acetylmethadol treatment programs operating in the State of Arkansas. All methadone and alpha acetylmethadol treatment programs shall be licensed by the bureau;

(4) Treatment directly administered by the United States Department of Defense or any other federal agency; and

(5) Self-help or twelve-step programs such as Alcoholics Anonymous, Cocaine Anonymous, Narcotics Anonymous, Al-Anon, or Narc-Anon.

History. Acts 1995, No. 173, §§ 3, 4; 1999, No. 12, § 1.

A.C.R.C. Notes. Acts 1995, No. 173, § 9, provided: "Any person, partnership, association, or corporation establishing, conducting, managing, or operating any alcohol, drug, or alcohol and drug abuse treatment program in Arkansas and not exempted by the terms of this subchapter,

unless currently accredited by the Bureau of Alcohol and Drug Abuse Prevention, shall have one (1) year from July 28, 1995, to complete the requirements for licensure by the Bureau of Alcohol and Drug Abuse Prevention."

Amendments. The 1999 amendment added the last two (2) sentences of (b)(3); and made stylistic changes.

20-64-904. Penalties.

(a)(1) A person who immediately before July 28, 1995, was accredited to establish, conduct, manage, or operate an alcohol and drug abuse treatment program pursuant to § 20-64-901 et seq. [repealed], shall be issued a license under this subchapter without a fee.

(2) The license shall be subject to be renewed at the time that the accreditation would have been due for renewal.

(b)(1) Any person or program desiring to be licensed as an alcohol and drug abuse treatment program shall make application to the Bureau of Alcohol and Drug Abuse Prevention on forms prescribed by the bureau and shall furnish such information with the application as shall be required by the bureau.

(2)(A) Each application for licensure shall be accompanied by a nonrefundable license fee of seventy-five dollars (\$75.00).

(B) An additional fee will be paid by the entity seeking licensure at the end of the licensure review process for costs of the licensure review.

History. Acts 1995, No. 173, §§ 5, 12.

20-64-905. Renewal.

(a) Each alcohol and drug abuse treatment program licensure shall be renewed annually upon a payment of a fee of seventy-five dollars (\$75.00) by January 30 of each year to the Bureau of Alcohol and Drug Abuse Prevention.

(b) If any person or program covered by this subchapter fails to make application for renewal of his, her, or its license within one (1) year after expiration of the license, the license of the person or entity shall be revoked. That person or entity shall not be issued a new license, unless the person or entity makes application therefor and meets all requirements for licensure in effect at the time the application is filed.

History. Acts 1995, No. 173, § 8.

20-64-906. Disposition of funds.

All application fees and accreditation costs will be paid to the Bureau of Alcohol and Drug Abuse Prevention. The bureau will transfer the money to the State Treasury, and the money shall be specially designated for transfer to the Public Health Fund to cover maintenance and operation expenses incurred by the accreditation review process.

History. Acts 1995, No. 1032, § 7.

A.C.R.C. Notes. Acts 1995, No. 173, § 6 provided: "All application fees and licensure fees will be paid to the Bureau of Alcohol and Drug Abuse Prevention. The Bureau of Alcohol and Drug Abuse Prevention of the Department of Health will

transfer said money to the State Treasury, and said money shall be specially designated for transfer to the Alcohol and Drug Abuse Prevention Fund Account to cover maintenance and operation expenses incurred by the licensure review process."

20-64-907. Reporting requirements.

(a) All persons, partnerships, associations, or corporations operating alcohol and drug abuse treatment programs in the State of Arkansas, whether licensed by the Bureau of Alcohol and Drug Abuse Prevention or expressly exempted from licensure, shall be required to furnish such information at such times and in such form as may be required by the bureau.

(b) The bureau shall promulgate regulations and prescribe forms for the implementation of this section.

History. Acts 1995, No. 173, § 10.

20-64-908. Appeal process.

(a) The Arkansas Alcohol and Drug Abuse Coordinating Council shall have the power and authority to hear appeals regarding decisions by the Bureau of Alcohol and Drug Abuse Prevention not to license an alcohol, drug, or alcohol and drug abuse treatment program under this subchapter.

(b) All hearings and proceedings under this section shall be conducted in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 1995, No. 173, § 11.

20-64-909. Penalties.

(a) Any person, partnership, association, or corporation establishing, conducting, managing, or operating any alcohol, drug, or alcohol and drug abuse treatment program within the meaning of this subchapter without first obtaining licensure shall be guilty of a Class A misdemeanor and upon conviction shall be liable to a fine imposed pursuant to a Class A misdemeanor.

(b) Each day that an alcohol and drug abuse treatment program shall operate after a first conviction shall be considered a Class D felony and upon conviction shall be liable to a fine imposed pursuant to a Class D felony.

History. Acts 1995, No. 173, § 7.

SUBCHAPTER 10 — ALCOHOL AND DRUG ABUSE COORDINATING COUNCIL

SECTION.

20-64-1001. Arkansas Drug Director.

20-64-1002. Arkansas Alcohol and Drug Abuse Coordinating Council — Creation.

SECTION.

20-64-1003. Arkansas Alcohol and Drug Abuse Coordinating Council — Functions, powers, and duties.

A.C.R.C. Notes. Acts 1995, No. 551, § 4, provided: "The Highway Safety Program Advisory Council created by Arkansas Code 12-6-101 is transferred to the Arkansas Alcohol and Drug Abuse Coordinating Council pursuant to a type 3 transfer as defined in Arkansas Code 25-2-106."

Acts 1995, No. 551, § 5, provided: "The Arkansas Alcohol and Drug Abuse Authority of the Bureau of Alcohol and Drug Abuse Prevention, Arkansas Department of Health is transferred to the Arkansas Alcohol and Drug Abuse Coordinating Council pursuant to a type 3 Transfer as defined in Arkansas Code 25-2-106."

Effective Dates. Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for

all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor [sic], it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

20-64-1001. Arkansas Drug Director.

(a) There is created within the Office of the Governor a position of Arkansas Drug Director, who shall serve at the pleasure of the Governor.

(b) The director shall serve as the coordinator for development of an organizational framework to ensure that alcohol and drug programs and policies are well planned and coordinated.

(c) The director, in cooperation with the Department of Finance and Administration, shall perform financial monitoring of each drug task force of the state to ensure that grant funds are being expended according to law and to ensure that the drug task force's financial record system is adequate to provide a clear, timely, and accurate accounting of all asset forfeitures, revenues, and expenditures.

(d)(1) The director shall maintain an office at which all records required by law to be kept by the director shall be maintained.

(2) The director is authorized to establish and enforce rules and regulations regarding the management of the Special State Assets Forfeiture Fund, created in § 5-64-505, and the maintenance and inspection of drug task force records concerning asset forfeitures, revenues, expenditures, and grant funds.

(3) The director is authorized to hire employees to assist in these functions.

History. Acts 1989, No. 855, § 1; 2001, No. 1690, § 3.

Amendments. The 2001 amendment added (c) and (d).

20-64-1002. Arkansas Alcohol and Drug Abuse Coordinating Council — Creation.

(a) There is hereby established the Arkansas Alcohol and Drug Abuse Coordinating Council, hereafter referred to in this subchapter as the coordinating council.

(b) The coordinating council shall be composed of twenty-five (25) members as follows:

(1) Eleven (11) members of the coordinating council shall be administrative officers of the following agencies, or their appropriate designees, confirmed by gubernatorial appointment:

(A) The Arkansas Drug Director, who shall serve as chairperson of the coordinating council;

(B) The Director of the Bureau of Alcohol & Drug Abuse Prevention of the Department of Health;

(C) The Director of the Department of Arkansas State Police;

(D) The Director of the Department of Education;

(E) The Director of the Arkansas State Highway and Transportation Department;

(F) The Director of the Department of Correction;

(G) The Director of the Department of Finance and Administration;

(H) The Adjutant General of the Arkansas National Guard;

- (I) The Attorney General of Arkansas;
- (J) The Director of the State Crime Laboratory; and
- (K) The Director of the Office of Alcohol Testing of the Department of Health.

(2) The following persons shall be appointed by the Governor for three-year terms and will not serve more than two (2) consecutive terms:

(A) One (1) police chief, one (1) county sheriff, and the Director of the Administrative Office of the Courts;

(B) A prosecuting attorney;

(C) A private citizen not employed by the state or federal government;

(D) A director of a publicly funded alcohol and drug abuse treatment program;

(E) A school drug counselor;

(F) A director of a drug abuse prevention program;

(G) A director of a driving while intoxicated program;

(H) A health professional; and

(I) Four (4) members from the state at large who have demonstrated knowledge of or interest in alcohol and drug abuse prevention, at least two (2) of whom shall be recovering persons.

(c) The coordinating council members may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

(d) The coordinating council may appoint noncouncil members for PEER review of grants, and the PEER Review Committee members shall be entitled to reimbursement for actual expenses and mileage to be paid by the Bureau of Alcohol and Drug Abuse Prevention from funds appropriated for its maintenance and operation.

(e) The United States Attorney for Arkansas or her or his designee shall serve on the council in an advisory capacity.

History. Acts 1989, No. 855, §§ 2, 5; 1995, No. 551, § 1; 1997, No. 250, § 203.

A.C.R.C. Notes. As enacted by Acts 1995, No. 551, § 1, subsection (d) of this section also provided: "On the effective date of this 1995 act the terms of office of the members who were deleted from the council by this 1995 act shall expire and the new members prescribed by this 1995

act shall take office or be appointed as the case may be."

The reference to "PEER Review of grants" and "PEER Review Committee members" in this section may or may not refer to 42 U.S.C. § 290aa-3(a) or to § 20-9-501 et seq., or both.

Amendments. The 1997 amendment rewrote (c).

20-64-1003. Arkansas Alcohol and Drug Abuse Coordinating Council — Functions, powers, and duties.

(a) The Arkansas Alcohol and Drug Abuse Coordinating Council shall have the responsibility for overseeing all planning, budgeting, and implementation of expenditures of state and federal funds allocated for alcohol and drug education, prevention, treatment, and law enforcement.

(b) The coordinating council shall have the following functions, powers, and duties:

(1) All federal money received by the State of Arkansas for drug law enforcement, education, or prevention shall be reviewed by the coordinating council for disbursement, accountability, and evaluation;

(2) The coordinating council shall review and coordinate all school-based drug education, prevention, and awareness programs and efforts funded by the state.

(c) The coordinating council shall assist community-based prevention councils in planning and coordinating prevention activities, promoting innovative programs, developing stable funding sources, and disseminating current information. These local councils should be racially balanced and shall include at least one (1) representative from each of the following groups:

(1) One (1) law enforcement officer;

(2) One (1) school board member;

(3) One (1) school administrator;

(4) One (1) school teacher;

(5) One (1) parent;

(6) One (1) student;

(7) One (1) alcohol and drug abuse program director; and

(8) One (1) health professional.

(d) The coordinating council shall develop training and education programs for criminal justice personnel in drug-related matters in conjunction with the Arkansas Law Enforcement Training Academy.

(e)(1) The coordinating council shall have authority to develop its rules of procedure to include the establishment of a committee structure for the approval of funding and other purposes.

(2) Committees shall include, but not be limited to, a prevention, education, and treatment committee chaired by the Director of the Bureau of Alcohol and Drug Abuse Prevention, and a law enforcement committee.

(f) The coordinating council shall establish advocacy groups among the business community and youth population of this state.

(g) The coordinating council shall work with all federal, state, county, and local law enforcement agencies to ensure an integrated system of enforcement activities.

(h) The coordinating council shall perform other functions as may be necessary to carry out the functions, powers, and duties as set forth in this subchapter.

History. Acts 1989, No. 855, §§ 3, 4;
1995, No. 551, §§ 2, 3.

CHAPTERS 65-74

[Reserved]

SUBTITLE 5. SOCIAL SERVICES**CHAPTER 75****GENERAL PROVISIONS**

[Reserved]

A.C.R.C. Notes. Acts 1995, No. 1309, §§ 1 and 2, as amended by Acts 1997, No. 312, § 20, provided: "SECTION 1. As used in this act:

"(1) "Child" means any person under the age of twenty-one;

"(2) "Client" means any child or relative of a child who is receiving or has received services or benefits from the Department of Human Services; and

"(3) "Department" means the Department of Human Services.

"SECTION 2. (a) The department shall request the Department of Computer Services to conduct a study as to the feasibility and cost of assignment of identification numbers to each client and establishment of the data base which will track clients by their identification number. This study

shall include a review of the feasibility and legality of providing access to information from all divisions.

"(b) The Department of Computer Services shall include all agencies in their study which provide services to the same clients as the department to include, but is not limited to, the Department of Health, the Department of Education, the Department of Finance and Administration, the Department of Community Punishment, and the Department of Correction.

"(c) The Department of Computer Services shall provide monthly progress reports of this study to the Arkansas Communications Study Committee and Senate Interim Committee on Children and Youth."

CHAPTER 76**PUBLIC ASSISTANCE GENERALLY****SUBCHAPTER**

1. GENERAL PROVISIONS.
2. ADMINISTRATION GENERALLY.
3. SOCIAL SECURITY DISABILITY DETERMINATION.
4. GRANTS OF ASSISTANCE.

A.C.R.C. Notes. References to "this chapter" in §§ 20-76-101 — 20-76-437

may not apply to § 20-76-438, which was enacted subsequently.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 20-76-101. Definitions.
- 20-76-102. Coordination of state agency service delivery.
- 20-76-103. Use of subpoenas in hearings on benefit determinations.
- 20-76-104. Distribution of commodities.
- 20-76-105. Arkansas Transitional Employment Board.

SECTION.

- 20-76-106. Statewide implementation plan — Transitional Employment Assistance.
- 20-76-107. Independent evaluator.
- 20-76-108. Local transitional employment assistance coalitions.
- 20-76-109. Use of contracts.

Cross References. Penalties for food stamp trafficking, § 5-55-204.

Preambles. Acts 1953, No. 110 contained a preamble which read: "Whereas Section 2 of Act 309 of 1951 did create a new type of welfare assistance grant known as Aid to the Permanently and Totally Disabled thereby necessitating that the definition of Welfare "Assistance Grants" be amended to include this type of assistance, and

"Whereas Act 297 of 1951 did redistrict the State of Arkansas into Six Congressional Districts, and

"Whereas said redistricting did create a conflict between Act 297 of 1951 and Section 3 of Act 280 of 1939 (Ark. Stats. (1947) Section 83-103) thereby making it impossible to follow the language of Section 3 of Act 280 of 1939, and

"Whereas it has become necessary to amend Section 3 of Act 280 of 1939 (Ark. Stats. (1947) Section 83-103) to conform to Act 297 of 1951"

A.C.R.C. Notes. Acts 1997, No. 1058, § 1, provided: "Purpose. The General Assembly recognizes that for too many families, welfare has become what it never was intended to be: a permanent way of life. This system of continuous income maintenance not only discourages all incentive for an individual to become self-sufficient, but often leads to intergenerational dependency, and has built-in disincentives toward obtaining work and toward any effort to seek and secure a job. The total package of welfare benefits available to some is frequently better than the package of benefits the working poor can obtain, creating an incentive to stay on welfare. The State's welfare system has numerous disincentives for the maintenance of a stable two-

parent family unit. The role and responsibilities of the father are largely ignored in the current system although the State's role should be to promote family and community responsibility for nurturing children, not to take their place. Accordingly, the General Assembly hereby declares that welfare reform is one of the major human service priorities of state government and establishes the goals of achieving a significant reduction in the number of citizens who are enrolled in such programs, transforming a "one size fits all" welfare system that fosters dependence, low self-esteem, and irresponsible behavior to one that rewards work and fosters self-reliance, responsibility, and family stability. The General Assembly intends that new approaches be designed to provide county Human Services offices with flexibility and autonomy to craft local solutions, encourage volunteer, religious, and charitable organizations to fulfill a critical role in leveraging the reduced funding available for welfare programs, create a system that is just and compassionate, hold individuals accountable for their actions, and recognize that even with assistance some recipients may be unable to attain complete self-sufficiency."

Effective Dates. Acts 1939, No. 280, § 41: Mar. 10, 1939. Emergency clause provided: "It is hereby ascertained and declared to be a fact that there are many needy aged, dependent children, needy blind, crippled children and other dependent persons who are suffering for the want of care, hospitalization, medical attention and other comforts of life; that Federal Funds are available, if matched by State Funds; that the unfortunate of this State can obtain the necessary relief only by the remedies set up in this act.

Therefore, an emergency is declared to exist, and this act being necessary for the immediate preservation of the public peace, health and safety, shall take effect and be in force and effect from and after its passage and approval."

Acts 1953, No. 110, § 3: Feb. 20, 1953. Emergency clause provided: "Whereas Section 2 of Act 309 of 1951 did create a new type of welfare assistance grant known as Aid to the Permanently and Totally Disabled thereby necessitating that the definition of Welfare "Assistance Grants" be amended to include this type of assistance; and whereas Act 297 of 1951 did redistrict the State of Arkansas into Six Congressional Districts; and whereas said redistricting did create a conflict between Act 297 of 1951 and Section 3 of Act 280 of 1939 (Ark. Stats. (1947) Section 83-103) thereby making it impossible to follow the language of Section 3 of Act 280 of 1939; and whereas it has become necessary to amend Section 3 of Act 280 of 1939 (Ark. Stats. (1947) Section 83-103) to conform to Act 297 of 1951; and whereas it is essential to the public health, safety and interest that this conflict be remedied, an emergency is hereby declared to exist, and this act shall be in effect from and after its approval."

Acts 1987, No. 184, § 20: July 1, 1987. Emergency clause provided: "It is hereby found and determined by the Seventy-Sixth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1987 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1987 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1987."

Acts 1987, No. 727, § 6: Apr. 7, 1987. Emergency clause provided: "It is hereby found and determined by the Seventy-Sixth General Assembly that the effectiveness of the Department of Human Ser-

vices to render fair and impartial administrative decisions on matters appealed before it requires the ability to compel the attendance of witnesses and the production of documentary evidence upon which such decisions may be based. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 1239, § 125: July 1, 1993. Emergency clause provided: "It is hereby found and determined by the Seventy-Ninth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1993 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1993 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety, Section 119 shall be in full force and effect from and after the date of passage and approval and the remainder of the Act shall be in full force and effect from and after July 1, 1993."

Acts 1997, No. 1058, § 33: July 1, 1997. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the United States Congress has amended the laws pertaining to certain federally funded public assistance programs; that these programs are crucial to the life and health of many needy citizens of the State of Arkansas who otherwise will be unable to obtain food, clothing, shelter, or medical care; that federal law mandates participating states to implement new public assistance programs on or before July 1, 1997, or forfeit federal funding necessary for such programs; that this act so provides. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety, shall be in full force and effect on July 1, 1997."

Acts 1999, No. 1567, § 28: July 1, 1999. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the United States Congress has amended the laws pertaining to certain federally funded public assistance programs; that these programs are crucial to the life and health of many needy citizens of the State of Arkansas who otherwise will be unable to obtain food, clothing, shelter, or medical care; that federal funds have already been

appropriated for this program and any delays could work irreparable harm upon the proper administration of essential governmental programs and the State of Arkansas may risk forfeiture of the federal funding; that this act so provides. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety, shall be in full force and effect on July 1, 1999."

20-76-101. Definitions.

As used in this chapter:

(1) "Assessment services" means an evaluation to determine the abilities, talents, proficiencies, and deficiencies of applicants and recipients with regard to the ability of the individual to move into employment;

(2) "Board" means the Arkansas Transitional Employment Board;

(3) "Date of enrollment" means the date that an applicant is approved as eligible for the Transitional Employment Assistance Program;

(4) "Department" means the Department of Human Services;

(5) "Diversion from assistance" means a one-time loan of money or the furnishing of nonmonetary assistance to an applicant who is eligible for but does not require enrollment in the program;

(6) "Education or training" means basic remedial education, adult education, high school education, education to obtain the equivalent of a high school diploma, education to learn English as a second language, applied technology training, and postsecondary education and training;

(7) "Employment assistance" means financial assistance, child care, assistance to secure full-time employment, assistance in obtaining education and training that leads to full-time employment, case management services, and other services designed to assist recipients in achieving self-sufficiency through employment;

(8) "Extended support services" means assistance to a recipient who has obtained employment under the program, which may include, but is not limited to, child care and medical assistance;

(9) "Full-time education or training" means education or training on a full-time basis as defined by the department;

(10) "Medical assistance" means assistance furnished pursuant to Title XIX of the Social Security Act, commonly referred to as Medicaid, or a state-funded medical assistance program;

(11) "Personal responsibility agreement" means an agreement between the department and the recipient specifying the recipient's responsibilities that are a condition of receiving employment assistance, which may include an employment plan that describes what the

recipient and the department will do to assist the recipient in achieving self-sufficiency through employment;

(12) "Positive reinforcement outcome bonus" means a one-time cash assistance bonus for achieving an employment plan goal;

(13) "Relocation assistance" means assistance to an eligible recipient who lives in an area of limited job opportunities to enable the recipient to relocate for purposes of full-time employment that the recipient has secured;

(14) "Support services" means child care, transportation, financial assistance, medical assistance, substance abuse treatment, life skills training, parenting skills training, and other similar assistance;

(15) "TEA" means the Transitional Employment Assistance Program; and

(16) "Unearned income" means all income that a recipient receives from sources other than employment, including child support payments, supplemental security income, supplemental security disability income, workers' compensation, and unemployment insurance.

History. Acts 1939, No. 280, § 1; 1953, No. 110, § 1; A.S.A. 1947, § 83-101; Acts 1997, No. 1058, § 2; 1999, No. 1567, § 3.

Amendments. The 1997 amendment rewrote the section.

The 1999 amendment rearranged the existing definitions in alphabetical order; inserted (2); added "and post-secondary

education and training" in (6); substituted "obtained employment" for "exhausted the financial assistance available" in (8); and made stylistic changes.

U.S. Code. Title XIX of the Social Security Act referred to in this section is codified as 42 U.S.C. § 1396 et seq.

CASE NOTES

Cited: Norton v. Blaylock, 285 F. Supp. 659 (W.D. Ark. 1973).

20-76-102. Coordination of state agency service delivery.

(a)(1) To ensure that job-finding assistance is being adequately provided to food stamp and transitional employment assistance recipients, the Arkansas Employment Security Department may periodically station appropriate staff for some portion of a workday in any county office of the Department of Human Services.

(2) The Director of the Arkansas Employment Security Department and the Director of the Department of Human Services shall enter into a written agreement regarding the provision of the services to recipients of food stamps and transitional employment assistance.

(b) The Department of Human Services shall appropriately train and supervise all employees and other persons who are responsible for developing, evaluating, and managing personal responsibility agreements for transitional employment assistance recipients. The training and supervision shall include, but not be limited to, a competency-based case management program to measure the effectiveness of each plan and to provide appropriate oversight, implementation, and training to identify and assist victims of domestic violence.

(c) To ensure that all available state government resources are used to help transitional employment assistance recipients make the transition from welfare to work, each of the following state agencies and organizations shall also be required to work with the Department of Human Services in providing transitional employment assistance services:

- (1) The Arkansas Employment Security Department;
- (2) The Department of Health;
- (3) The Department of Higher Education, including community colleges and the University of Arkansas Cooperative Extension Service;
- (4) The Department of Education;
- (5) The Arkansas Development Finance Authority;
- (6) The Arkansas Economic Development Commission;
- (7) The Arkansas State Highway and Transportation Department;
- (8) The Department of Finance and Administration, including the Office of Child Support Enforcement;
- (9) The State Child Abuse and Neglect Prevention Board;
- (10) The Arkansas Literacy Council, Inc.;
- (11) The Department of Workforce Education; and
- (12) Other state agencies as directed by the Governor or as directed by the General Assembly.

(d) State agencies required under subsection (c) of this section to work with the Department of Human Services in providing transitional employment assistance services to recipients shall make every effort to use financial resources in their respective budgets and to seek additional funding sources, whether private or federal, to supplement the moneys allocated by the Department of Human Services for the Transitional Employment Assistance Program.

(e) All agencies of the state and local governments providing program services shall work cooperatively with and provide any necessary assistance to the General Assembly and the Arkansas Transitional Employment Board and shall furnish, in a timely manner, complete and accurate information regarding the program to legislative committees and the board upon request.

History. Acts 1987, No. 184, §§ 14, 15; 1997, No. 1058, § 3; 1999, No. 1567, §§ 4, 5.

A.C.R.C. Notes. Former § 20-76-102, which concerned the Employment Security Division (now Arkansas Employment Security Department) and service to food stamp applicants, is deemed to be superseded by this section. The former section was derived from Acts 1985, No. 311, §§ 12, 13.

Amendments. The 1997 amendment rewrote the section.

The 1999 amendment inserted present (c)(11) and redesignated former (c)(11) as present (c)(12); inserted "and organiza-

tions" in (c); inserted "Arkansas" in (c)(1); inserted "University of Arkansas" in (c)(3); deleted "including the General Education Division and the Vocational Education Division" at the end of (c)(4); substituted "Economic" for "Industrial" in (c)(6); inserted "State" in (c)(7); substituted "Arkansas Literacy Council, Inc." for "Arkansas Adult Literacy Council" in (c)(10); in (e), substituted "program" for "TEA program," "Arkansas Transitional Employment Board" for "TEA Program advisory council", and "board" for "advisory council" at the end; and made stylistic changes.

(a) The Chief Counsel of the Department of Human Services is authorized to require the attendance of witnesses and the production of books, records, or other documents through the issuance of subpoenas when the testimony or information is necessary to adequately present the position of the Department of Human Services when making fair hearing determinations or conducting investigations relating to public assistance benefits.

"The State of Arkansas to the Sheriff of County: You are commanded to subpoena ,
(name)

....., to attend a proceeding before the Arkansas Department
(address)
of Human Services to be held at
on the day of, 20 .., and testify and/or produce the
following books, records, or other documents, to wit:
....., in the matter of
(style of proceeding)

being conducted under the authority of
WITNESS my hand this day of, 20

.....
Chief Counsel, Department of Human Services

(c) Subpoenas provided for in this section shall be served in the manner as now provided by law and returned and a record made and kept by the department. The fees and mileage of officers serving the subpoenas and witnesses in answer to subpoenas shall be the same as now provided by law.

(d) Applicants and recipients of public assistance benefits who request fair hearings on determinations made by the department and other parties to administrative adjudications of the department may request issuance of subpoenas by the chief counsel. These requests for subpoenas shall be granted by the chief counsel if the testimony or documents desired are considered necessary and material without being unduly repetitious of other available evidence.

(e) Persons duly served with subpoenas issued pursuant to the authority provided in this section who shall refuse to testify or produce books, records, or documents may be cited on affidavit through application of the chief counsel to the Circuit Court of Pulaski County or any circuit court of the state where the subpoena was served. Failure to obey the subpoena may be deemed a contempt, with punishment accordingly.

History. Acts 1987, No. 727, §§ 1-5; 1993, No. 273, § 1.

20-76-104. Distribution of commodities.

The Department of Human Services shall neither seek reimbursement nor charge any fees for distributing commodities furnished to the state by the federal government.

History. Acts 1993, No. 1239, § 70.

20-76-105. Arkansas Transitional Employment Board.

(a) There is created an Arkansas Transitional Employment Board, which shall be composed of the following members:

- (1) The Director of the Department of Human Services;
- (2) The Director of the Arkansas Employment Security Department;
- (3) The Director of the Department of Health;
- (4) The Director of the Department of Workforce Education;
- (5) The Director of the Department of Higher Education;
- (6) The Director of the Arkansas Economic Development Commission;

(7) Three (3) members appointed by the Governor; and

(8) Six (6) members, at least one (1) of whom shall be a current or former transitional employment assistance or Aid to Families with Dependent Children recipient appointed by the Governor from a list of ten (10) nominees, of whom five (5), at least one (1) of whom shall be a current or former transitional employment assistance or Aid to Families with Dependent Children recipient, shall be submitted by the President Pro Tempore of the Senate and five (5), at least one (1) of whom shall be a current or former transitional employment assistance or Aid to Families with Dependent Children recipient, shall be submitted by the Speaker of the House of Representatives.

(b) The appointed members shall be employed in the private sector, and a majority of those members shall have managerial experience.

(c)(1) The appointed members of the Arkansas Transitional Employment Board shall serve four-year staggered terms.

(2) Initial appointed members of the Arkansas Transitional Employment Board shall draw lots to determine the length of their terms.

(3) The Director of the Department of Human Services shall call the first meeting of the Arkansas Transitional Employment Board within thirty (30) calendar days of their appointments, and the Governor, in consultation with the chairs of the House Committee on Public Health, Welfare, and Labor and the Senate Committee on Public Health, Welfare, and Labor, shall select a chairperson from among the appointed members.

(4) Five (5) members of the Arkansas Transitional Employment Board shall constitute a quorum.

(5) Only the nine (9) appointed members shall serve as voting members.

(6) No member may authorize a designee to vote in his or her behalf.

(7) The Arkansas Transitional Employment Board shall meet with the Governor every six (6) months or as frequently as it deems necessary, upon request of the chairperson.

(8) A majority of the appointed members shall be citizens with no direct fiduciary interest in programs involved with the Transitional Employment Assistance Program.

(d) The Arkansas Transitional Employment Board shall:

(1) Review, recommend, and approve transitional employment assistance regulations developed by the Department of Human Services;

(2) Oversee the operation of the program and progress toward the program outcomes, including the activities of the local coalitions and all state agencies involved in the program;

(3) Coordinate the activities of all state agencies involved in the program, including moderating disagreements among those state agencies about their respective responsibilities in the program and facilitating their active collaboration;

(4) Employ necessary staff to assist with the range and diversity of its charge;

(5) Review, recommend, and approve annually updates of the state's transitional employment assistance plan by December 1 of each year for the next year and report on the updated plan to the Governor and the House Committee on Public Health, Welfare, and Labor and the Senate Committee on Public Health, Welfare, and Labor;

(6) Review, recommend, and approve charters, rechararters, or dissolutions of local coalitions recommended by the Department of Human Services;

(7) Review, recommend, and approve Department of Human Services guidelines to local coalitions regarding annual plan development;

(8) Review, recommend, and approve guidelines for the funding of local coalitions;

(9) Review, recommend, and approve all requests for proposals using program moneys and state-controlled welfare-to-work moneys;

(10) Initiate activities to foster multicounty collaboration, including establishing incentives for local coalitions with small caseloads to combine and become multicounty coalitions;

(11) Respond to and report on citizens' concerns about the implementation and administration of the program;

(12) Review, recommend, and approve standards of eligibility for assistance developed by the Department of Human Services;

(13) Review the Department of Human Services' plan for bonus awards and employee incentives focused on achieving program outcomes;

(14) Submit biannual reports to the House Committee on Public Health, Welfare, and Labor and the Senate Committee on Public Health, Welfare, and Labor and to the Governor;

(15) Require that, prior to approval, each local transitional employment assistance implementation plan describe a method by which the corresponding regional workforce investment board will support the local transitional employment assistance implementation plan;

(16) Contract for an independent evaluation of the program;

(17) Review, recommend, and approve a plan developed by the Department of Human Services for home visits to check on the safety and well-being of children in families that have lost transitional employment assistance cash assistance for any reason other than employment;

(18) Provide guidance and oversight to the Governor's Partnership Council on Children and Families, which is a collaborative partnership with the Department of Health, the Department of Education, and the Department of Human Services;

(19) Review, recommend, and approve a plan developed by the Department of Human Services to provide services and information to former program recipients to help them stay employed and to achieve progressively higher wages and earnings;

(20) Review, recommend, and approve a plan developed by the Department of Human Services for pilot projects to provide employment training, job search services, and parenting education to noncustodial parents of children in transitional employment assistance families that cannot pay child support because of unemployment or low earnings;

(21) The Arkansas Transitional Employment Board shall utilize the expertise of the Arkansas Workforce Investment Board to jointly:

(A) Develop a plan for contracting with state agencies, two-year technical institutions, local governments, or private or community organizations to establish, using available Temporary Assistance for Needy Families funds, at least three (3) demonstration projects, to develop job training certificate programs.

(B) The job training certificate programs shall provide short-term training designed to prepare low-income parents and others for jobs that pay significantly more than minimum wage and that are available in the area.

(C) The projects shall be designed in consultation with local employers, temporary employment assistance coalitions, and workforce investment boards to identify appropriate job opportunities and needed skills and training.

(D) Contracts shall include performance-based payments keyed to enrollments, completion, job placement, and job retention.

(E) Temporary Assistance for Needy Families may be combined with other state and federal funds in ways consistent with federal laws and rules;

(22)(A) Oversee the operation of transitional employment assistance child care and transitional child care with the goals of maintaining the current provision of child care to families receiving transitional employment assistance and families who have left transitional employment assistance, to maximize child care available to low-income families and to avoid overspending the biennial budget for child care.

(B) The Arkansas Transitional Employment Board may authorize an increase in the spending cap on low-income child care if it certifies

to the Governor and the Chief Fiscal Officer of the State that the additional expenditure of funds will not result in shortfalls in the transitional employment assistance child care or transitional child care budgets under existing conditions.

(C) If the Arkansas Transitional Employment Board certifies to the Governor and the Chief Fiscal Officer of the State and notifies the Legislative Council and the House Interim Committee on Public Health, Welfare, and Labor and the Senate Interim Committee on Public Health, Welfare, and Labor that the action is necessary to avoid overspending the biennial budget for child care, it may authorize one (1) or more of the following actions:

(i) An increase in the copayment schedule for transitional child care;

(ii) An allocation of further Temporary Assistance to Needy Families funds;

(iii) A reduction of a total of twenty-four (24) months in the transitional child care assistance available to temporary employment assistance recipients who leave assistance after the reduction; or

(iv) A reduction in the spending cap for low-income child care; and

(23)(A) Oversee and coordinate the operation of the local coalitions with the goals of continuing their strong contributions to the success of transitional employment assistance recipients, former transitional employment assistance recipients, and the Arkansas Transitional Employment Assistance Program, including recruiting new members, arranging training so that coalition officers and members can understand the resources and services available to further their mission, fostering collaboration with workforce investment boards, and assisting local coalitions to obtain available funding from state, local, private, and nonprofit sources to support their activities.

(B) The Arkansas Transitional Employment Board shall distribute any state funds available to the local coalitions on a competitive basis.

(e) No member of the Arkansas Transitional Employment Board shall:

(1) Vote on a matter under consideration by it:

(A) Regarding the provision of services by the member; or

(B) That would provide direct financial benefit to the member, the immediate family of the member, or an organization that employs the member; or

(2) Engage in any other activity determined by law to constitute a conflict of interest.

(f)(1) The Governor, in consultation with the chairs of the House Committee on Public Health, Welfare, and Labor and the Senate Committee on Public Health, Welfare, and Labor, shall appoint the staff director. The appointment of the staff director shall be subject to Senate confirmation.

(2) The staff director shall supervise the Arkansas Transitional Employment Board's staff and coordinate the activities of those state agencies charged with implementation of the program.

(g) The Agency Advisory Council shall be formed to advise and to meet in conjunction with the Arkansas Transitional Employment Board. The council shall be composed of the following members or other members as the Arkansas Transitional Employment Board may determine:

(1) The Director of the Division of County Operations of the Department of Human Services;

(2) The Director of the State Child Abuse and Neglect Prevention Board;

(3) The Director of the Division of Child Care and Early Childhood Education of the Department of Human Services;

(4) The Director of the Office of Child Support Enforcement;

(5) The Director of the Department of Education;

(6) The Director of the Arkansas Development Finance Authority;

(7) The Director of the Arkansas State Highway and Transportation Department;

(8) One (1) member of the Arkansas Workforce Investment Board Executive Committee; and

(9) Two (2) members of local coalitions selected by the chair of the board.

(h) The council shall:

(1) Periodically make recommendations to the Arkansas Transitional Employment Board about the program, especially pertaining to collaborative efforts among agencies involved in the Arkansas Transitional Employment Board;

(2)(A) Provide reasonable and necessary cooperation with Arkansas Transitional Employment Board members and staff and local coalition members and staff; and

(B) Periodically report to the Arkansas Transitional Employment Board on local coalition activities; and

(3) Advise the board on how to address outcomes.

(i)(1) This section shall be reviewed by the General Assembly prior to that date; and

(2) In its review, the General Assembly shall assess the status of the program and shall determine whether the responsibility for administering the program should be transferred to another state agency or board.

(j) There shall be no liability on the part of and no cause of action of any nature shall arise against any member of the Arkansas Transitional Employment Board or its agents or employees or the association or its agents or employees for any action or omission by them in the performance of their powers and duties under this chapter.

(k) The Arkansas Transitional Employment Board is designed to be an agent of change and challenge to the existing federal, state, and local agency service delivery mechanisms. The challenge shall be to ensure that persons on transitional employment assistance are getting the assistance, the information, and the services needed to help these low-income persons become self-sufficient.

(l) The administration of the program shall focus on promoting the following outcomes for program recipients and poor families in Arkansas:

(1) Increase the percentage of needy families that receive transitional employment assistance;

(2) Decrease the number of families who need transitional employment assistance cash assistance;

(3) Decrease spending on transitional employment assistance cash assistance;

(4) Increase the percentage of families receiving transitional employment assistance cash assistance who participate in work activities for the required number of hours;

(5) Increase the percentage of program recipients who receive services necessary for them to participate in work activities, including education and training, child care, and transportation, and to move toward self-sufficiency;

(6) Increase the percentage of program recipients facing barriers of substance abuse, domestic violence, physical or mental disabilities, or limited education and work experience who receive services necessary for them to participate in work activities and to move toward self-sufficiency;

(7) Increase the number of families who leave transitional employment assistance for work;

(8) Increase the hourly wages and monthly earnings of families who leave transitional employment assistance for work;

(9) Decrease the number of families who leave transitional employment assistance and face hardship or deprivation;

(10) Increase the percentage of families who leave transitional employment assistance for work who stay employed;

(11) Increase the percentage of families who leave transitional employment assistance for work who achieve progressively higher wages and earnings;

(12) Increase the percentage of families who leave transitional employment assistance cash assistance who move out of poverty; and

(13) Increase the percentage of transitional employment assistance families who leave for work and obtain job-related benefits provided by the employer.

(m)(1) The Arkansas Transitional Employment Board shall select three (3) of its members to form an executive committee.

(2) On those rare occasions when it becomes necessary for the Department of Human Services to take action on matters regarding the program between meetings of the Arkansas Transitional Employment Board, the director is authorized to contact the executive committee to receive direction on how to proceed.

(3) Any decisions or guidance given to the Department of Human Services by the executive committee shall be reported to the Arkansas Transitional Employment Board at its next meeting.

(4) Other duties may be assigned to the executive committee by a majority vote of the Arkansas Transitional Employment Board.

(5) This procedure may be changed by a majority vote of the Arkansas Transitional Employment Board.

(n) The Department of Human Services shall develop and maintain the indicators for the program outcomes subject to review and approval by the Arkansas Transitional Employment Board.

(o)(1) The Department of Human Services shall develop proper targets for each program outcome by July 1 of each year, beginning with July 1, 2002, subject to review and approval by the Arkansas Transitional Employment Board.

(2) The Arkansas Transitional Employment Board shall adopt the targets at the first meeting after July 1 of each year.

(3) The Arkansas Transitional Employment Board shall review and report on progress in achieving the targets by December 10 and June 10 of each year.

(4)(A) Reports shall be submitted to the Governor and to the House Interim Committee on Public Health, Welfare, and Labor and the Senate Interim Committee on Public Health, Welfare, and Labor.

(B) The report shall include comments from the Department of Human Services and other relevant state agencies about their activities and their progress toward the program outcome targets.

(p) Minutes of the Arkansas Transitional Employment Board's meetings, including attendance records, shall be submitted to the Governor and to the chairs of the House Interim Committee on Public Health, Welfare, and Labor and the Senate Interim Committee on Public Health, Welfare, and Labor after each meeting of the Arkansas Transitional Employment Board.

History. Acts 1997, No. 1058, § 4; 1999, No. 1567, § 6; 2001, No. 1264, §§ 1-3.

A.C.R.C. Notes. Prior to the 2001 amendment, § 20-76-105(c) contained three (3) subdivisions. Subdivisions (c)(2) and (3) read,

"(2) The Governor may remove an appointed member for cause. An absence from three (3) consecutive meetings results in automatic removal, unless the member is excused by the chairperson. Vacancies occurring on the board by reason of death or resignation shall be filled in the same manner as a regular appointment for the remainder of the unexpired term.

"(3) The members of the board shall not be entitled to compensation for their services but may receive expense reimbursement in accordance with § 25-16-902."

The above language was neither set out nor specifically deleted in Acts 2001, No.

1264, § 1. The remaining subdivision (c)(1) has been renumbered as (c) in order to conform to Code style.

Amendments. The 1999 amendment rewrote this section.

The 2001 amendment redesignated former (c)(1)(A) as present (c)(1) and redesignated the remaining subdivisions accordingly; substituted "Five (5)" for "Ten (10)" in (c)(4); substituted "shall serve" for "and the six (6) agency directors will serve" in (c)(5); deleted "transitional employment assistance" following "of the local" in (d)(2); substituted "House Committee on Public Health, Welfare, and Labor and the Senate Committee" for "House and Senate" in (d)(5) and (d)(14); added (d)(21)-(23); inserted "child care, and transportation" in (l)(5); substituted "families who" for "families that" in (l)(8); and added (l)(13); added (n)-(p); and made minor stylistic changes throughout.

20-76-106. Statewide implementation plan — Transitional Employment Assistance.

(a) The Arkansas Transitional Employment Board shall:

(1) Review, recommend, and approve a statewide implementation plan for ensuring the cooperation of state agencies and local agencies and encouraging the cooperation of private entities, especially those receiving state funds, in the coordination and implementation of the Transitional Employment Assistance Program and achievement of the goals; and

(2) Ensure that program recipients throughout the state, including those in rural areas, have comparable access to transitional employment assistance benefits.

(b) At a minimum, the transitional employment assistance implementation plan shall include:

(1) Performance standards and measurement criteria for state and county offices of the Department of Human Services and all service providers under the program;

(2) Contract guidelines for contract service providers under the program;

(3) Guidelines for training transitional employment assistance service providers, whether state employees or contract providers;

(4) Functions to be performed by each state agency in helping recipients make the transition from welfare to work;

(5) Guidelines for clarifying or, if necessary, modifying the rules of the state agencies charged with implementing the program so that all unnecessary duplication is eliminated;

(6) Guidelines for modifying compensation and incentive programs for state employees in order to achieve the performance outcomes necessary for successful implementation of the program;

(7) Guidelines for timely assessments for each participant which lead to an individual personal responsibility agreement that identifies the strengths of the participant and the barriers faced in obtaining a job and reaching self-sufficiency and the services to be provided to assist the participant in finding and keeping work and in moving toward self-sufficiency;

(8) Guidelines for timely provision of needed support services as specified in the individual personal responsibility agreement. These guidelines shall include procedures for evaluating the quality and value of assessments and the provision of support services;

(9) Guidelines governing job search requirements for transitional employment assistance applicants;

(10) Guidelines governing the provision of support services to transitional employment assistance participants and former transitional employment assistance participants to assist them in retaining employment and earning higher wages and career advancement;

(11) Guidelines governing the combining of work with education and training;

(12) Guidelines for the independent evaluation of all cases closed due to sanctions or time limits;

(13) A micro-lending program and an individual development trust account demonstration project for program recipients;

(14) Application guidelines and requirements for chartering local coalitions to plan and coordinate the delivery of services under the program at the local level;

(15) Criteria for relocation of program recipients which take into account factors, including, but not limited to, job availability, availability of support services, and proximity of relocation area to current residence;

(16) Criteria for the approval of the implementation plans submitted by local coalitions;

(17) Criteria for allocating program resources to local coalitions;

(18) Criteria for prioritizing work activities of program recipients in the event that funds are projected to be insufficient to support full-time work activities of program recipients. The criteria may include, but not be limited to, priorities based on the following:

(A) At least one (1) adult in each two-parent family shall be assigned priority for full-time work activities;

(B) Among single-parent families, a family that has older preschool children or school-age children shall be assigned priority for work activities;

(C) A recipient who has access to nonsubsidized child care may be assigned priority for work activities; and

(D) Priority may be assigned based on the amount of time remaining until the recipient reaches the applicable time limit for program participation or may be based on requirements of a personal responsibility agreement; and

(19) The development of a performance-based payment structure to be used for all program services which takes into account the degree of difficulty associated with placing a program recipient in a job, the quality of placement with regard to salary, benefits, and opportunities for advancement, and the recipient's retention of the placement. The payment structure should provide, if appropriate, bonus payments to providers that experience notable success in achieving long-term job retention with program recipients.

(c) The Department of Human Services shall prepare an annual transitional employment assistance implementation plan. The plan shall be subject to review, recommendation, and approval by the Arkansas Transitional Employment Board. The Arkansas Transitional Employment Board shall submit quarterly progress reports to the Governor, the House Committee on Public Health, Welfare, and Labor, and the Senate Committee on Public Health, Welfare, and Labor. The annual updated plan shall contain proposals for measuring and making progress toward the transitional employment assistance outcomes during the succeeding three-year period. The quarterly progress reports to the Governor, the House Committee on Public Health, Welfare, and

Labor, and the Senate Committee on Public Health, Welfare, and Labor shall include all information which the Arkansas Transitional Employment Board deems necessary for determining progress in achieving the outcomes. Information shall be provided for the state, each employment opportunity district, and each county. The report shall also include all information requested by resolution of the House Committee on Public Health, Welfare, and Labor and the Senate Committee on Public Health, Welfare, and Labor. This report shall include a copy of all federal monthly, quarterly, and annual reports submitted by the Department of Human Services regarding the Temporary Assistance for Needy Families program.

(d) The Department of Human Services shall submit biannual reports on the impact of welfare reform on child welfare issues to the Senate Committee on Children and Youth and the House Subcommittee on Children and Youth of the House Committee on Aging, Children and Youth, and Legislative and Military Affairs.

(e) The House Committee on Public Health, Welfare, and Labor and the Senate Committee on Public Health, Welfare and Labor, the Senate Committee on Children and Youth, and the House Subcommittee on Children and Youth of the House Committee on Aging and Legislative Affairs shall report annually to the General Assembly their findings and recommendations regarding the program.

History. Acts 1997, No. 1058, § 4; 1999, No. 1567, § 7; 2001, No. 1264, § 4.

Amendments. The 1999 amendment deleted former (b) and redesignated the remaining subsections accordingly; inserted present (b)(8)-(b)(13) and redesignated the remaining subdivisions accordingly; substituted "Arkansas Transitional Employment Board" for "department" in (a); substituted "Review, recommend, and approve" for "Develop" in (a)(1); inserted "state and county offices of the Depart-

ment of Human Services and" in (b)(1); substituted "Guidelines" for "Recommendations" in (b)(3), (b)(5)-(b)(7); deleted "develop" preceding "job" in present (b)(15); rewrote present (c); substituted "and the number and reasons for all exemptions and deferrals" for "because of domestic violence" in (c)(11); inserted (c)(21)-(c)(33) and redesignated former (c)(21) as present (c)(34); and made stylistic changes.

The 2001 amendment rewrote (a)-(c).

20-76-107. Independent evaluator.

(a) By September 1, 2001, the Arkansas Transitional Employment Board shall contract with a professional consultant for an ongoing independent evaluation of the Transitional Employment Assistance Program and program development. The independent evaluator shall submit biannual reports to the Governor and the House Committee on Public Health, Welfare, and Labor and the Senate Committee on Public Health, Welfare, and Labor which assess:

(1) How effective the program is in addressing each of the transitional employment assistance outcomes as specified in § 20-76-105(1) and progressing toward each of the annual targets set for those outcomes and any measures that might be taken to improve its performance;

(2) How effectively performance standards and measurement criteria in the statewide implementation plan are being met;

(3) How effectively state agencies are cooperating in the implementation of the program;

(4) How effectively various funding sources are being integrated into the support of the program;

(5) The effects of the program on recipients and their children, to include at least the following:

(A) Changes in family income and child poverty;

(B) Impact on child welfare;

(C) Impact on child hunger;

(D) Impact on housing conditions, family living arrangements, and homelessness;

(E) Impact on the health care coverage and the health status of children;

(F) Changes in family expenditure patterns;

(G) Births to unwed parents, teen pregnancies, and changes in family structure;

(H) Impact on child care patterns and youth supervision;

(I) The work history and employment patterns of adults, including whether they are working, the types of employment held, job retention, and their wages or earnings;

(J) Impact on substance abuse and substance abuse treatment; and

(K) Educational and skill attainment;

(6) Effectiveness of training received by program recipients;

(7) How effectively transitional employment assistance supportive services are being delivered and the extent to which they meet client needs in making the transition from welfare to work and achieving long-term economic selfsufficiency;

(8) Transitional employment assistance client usage of other forms of public assistance, including, at least, food stamps, Medicaid and ARKids First, and usage of nongovernmental forms of community services;

(9) Any other information deemed by the independent evaluator or the board to be helpful in assisting the Governor and the General Assembly in evaluating the impact and effectiveness of the program; and

(10) To the extent allowed by available funds, the evaluation shall include separate analyses for the following groups:

(A) Cases closed because of noncompliance;

(B) Cases closed because of earnings and employment; and

(C) Cases closed because of reaching the twenty-four-month lifetime limit on cash assistance.

(b) All agencies of the state and local government providing program services shall work cooperatively with and provide any necessary assistance to the independent evaluator and shall furnish in a timely manner complete and accurate information to the independent evaluator upon request.

(c)(1) The independent evaluation shall include a survey of families that have left the program to examine their work experience, their sources of financial support, the barriers that affect their ability to work, the well-being of families and children, including whether adults face hardships in providing food, shelter, or other basic necessities for their families, and their perceptions of the program and their life after welfare.

(2) The study shall utilize professionally recognized techniques for research on families leaving welfare, including statistical sampling and telephone and in-person surveys with rigorous follow-up to ensure adequate response rates.

History. Acts 1997, No. 1058, § 4; 1999, No. 1567, § 8; 2001, No. 1264, § 5.

Amendments. The 1999 amendment inserted present (a)(1), (a)(9), and (a)(10), deleted former (a)(7) and (a)(8), and redesignated the remaining subdivisions accordingly; substituted "By September 1, 1999, the Arkansas Transitional Employment Board shall" for "By July 1, 1999 the Governor shall" in (a); rewrote present (a)(6); deleted "based upon the number of individuals placed in employment" at the end of present (a)(7); inserted "or the board" in present (a)(11); added (c); and made stylistic changes.

The 2001 amendment, in the introductory language of (a), substituted "September 1, 2001" for "September 1, 1999," and substituted "House Committee on Public Health, Welfare, and Labor and the Senate Committee" for "House and Senate Committees"; in (a)(1), substituted "program" for "Transitional Employment Assistance Program," and substituted "each of the transitional...for those outcomes" for "program outcomes"; deleted (a)(5) and (a)(8) and redesignated the remaining subdivisions accordingly; added (a)(10); and made minor stylistic changes.

20-76-108. Local transitional employment assistance coalitions.

(a)(1) Each local transitional employment assistance coalition may select from its existing membership a local board to consist of at least eleven (11) members, or the coalition may choose to retain its existing board or have the entire coalition serve as the board. Each local coalition shall designate an interim chair who shall call the first meeting of the local board not more than thirty (30) days after selection of the board members.

(2) The membership of each coalition may include:

(A) Representatives of the principal entities that provide funding for the employment, education, training, and social service programs that are operated in the area;

(B) A representative of the chamber of commerce;

(C) A representative of the Department of Human Services;

(D) A representative of a community development organization;

(E) Representatives of the business community who represent a diversity of sizes of business;

(F) Representatives of other local planning, coordinating, or service-delivery entities; and

(G) A representative of a grassroots community or economic development organization that serves the poor of the community.

(3)(A) In selecting new or replacement members for the local board, the local coalition shall:

- (i) Seek to select a majority of business persons;
- (ii) Seek to select individuals who represent local government, program recipients, and organizations interested in providing employment, job training, social services, and community and economic development programs;
- (iii) Seek a membership which reflects the gender and ethnic character of the local community; and
- (iv) Seek to appoint a member of the local workforce investment board.

(B) A majority of the board shall be citizens with no direct fiduciary interest in programs involved with the Transitional Employment Assistance Program.

(4) No member of the local board shall:

(A) Vote on a matter under consideration by the board regarding the provision of services by the member that would provide direct financial benefit to the member, the immediate family of the member, or an organization that employs the member; or

(B) Engage in any other activity determined by law to constitute a conflict of interest.

(5)(A) Members of each local board shall serve three-year terms. The members at their first meeting shall draw lots to determine their respective lengths of term; and

(B) The members shall elect a chair to serve a one-year term.

(b)(1) The local board shall:

(A) Plan and coordinate the delivery of program services in its area;

(B) Replace vacancies in membership with the goal of establishing or retaining a majority of business persons;

(C) Moderate and propose solutions to disagreements between or among local offices of state agencies regarding their duties and responsibilities in the local program;

(D) Report on the participation of state agencies in local programs and periodically report its findings to the Arkansas Transitional Employment Board;

(E) Annually update the local coalition's implementation plan;

(F) Apply to the Arkansas Transitional Employment Board for any changes in the local transitional employment assistance coalition's charter;

(G) Receive funding via the fiscal agent approved in the local implementation plan;

(H) Employ necessary staff to assist with the range and diversity of its charge;

(I) Coordinate with local offices of state agencies in implementing state and local implementation plans and regulations;

(J) Contract for services to be provided to program recipients; and

(K) Develop a local transportation plan that emphasizes cost-effective, long-term solutions for the transportation challenges that face program recipients, former program recipients, and other poor Arkansas families in their areas.

(2)(A) Transportation services under this policy may include subsidized public transit, van-pooling, and subsidized vehicle purchase and maintenance plans.

(B) The department shall not approve the local implementation plan of a local coalition unless the plan provides a teen pregnancy prevention program within each segment of the service area in which the teen fertility rate is higher than the state average.

(C) The department shall not approve the local implementation plan of a local coalition unless the local implementation plan includes a teen pregnancy prevention program within each county of the service area in which the teen fertility rate is higher than the state average, based on the most recent five-year data available from the Department of Health.

(D) The department shall not approve the local implementation plan of a local coalition unless the local implementation plan includes a teen pregnancy prevention program within each county of the service area that ranks among the five (5) counties in the state with the highest number of births to teens, based on the most recent five-year data available from the Department of Health.

(E) The effective date of subdivisions (b)(2) and (b)(1)(K) of this section shall be July 1, 1999.

(c) Each local coalition shall establish a business registry for business firms committed to assist in the effort of finding jobs for program recipients. Registered businesses agree to work with the coalition and to hire program recipients to the maximum extent possible consistent with the nature of their business. Each quarter, the coalition shall publish a list of the businesses registered, the number of jobs each has provided for program recipients, and the current job openings with each registered business.

(d) There shall be no liability on the part of and no cause of action of any nature shall arise against any member of the coalition board or its agents or employees for any action or omission by them in the performance of their powers and duties under this chapter.

History. Acts 1997, No. 1058, § 4; rewrote (a)(1); added (a)(3) and (a)(4); rewrote (b); added (d); and made stylistic changes.
1999, No. 1567, § 9.

Amendments. The 1999 amendment

20-76-109. Use of contracts.

The Department of Human Services should, as appropriate, provide work activities, training, and other services through contracts. In contracting for work activities, training, or services, the following apply:

(1) A contract shall be performance-based. Whenever possible, payment shall be tied to performance outcomes that include factors such as, but not limited to, job entry, job entry at a target wage, and job retention, rather than tied to completion of training or education or any other phase of the program participation process.

(2) A contract may include performance-based incentive payments that may vary according to the extent to which the recipient is more difficult to place. Contract payments may be weighted proportionally to reflect the extent to which the recipient has limitations associated with the long-term receipt of welfare and difficulty in sustaining employment. The factors may include the extent of the recipient's prior receipt of welfare, lack of employment experience, lack of education, lack of job skills, and other factors determined appropriate by the department.

(3) Each contract awarded under the Arkansas Transitional Employment Program shall be awarded in accordance with state procurement and contract laws.

(4) The department may contract with commercial, charitable, or religious organizations. A contract must comply with federal requirements with respect to nondiscrimination and other requirements that safeguard the rights of participants. Services may be provided under contract, certificate, voucher, or other form of disbursement.

History. Acts 1997, No. 1058, § 4.

SUBCHAPTER 2 — ADMINISTRATION GENERALLY

SECTION.

- 20-76-201. Department of Human Services — Powers and duties.
- 20-76-202. Department of Human Services — Public assistance — Temporary funding.
- 20-76-203. [Repealed.]
- 20-76-204. County offices — Powers and duties.
- 20-76-205. Use of unspent federal assistance.
- 20-76-206. [Repealed.]
- 20-76-207. Political activity.
- 20-76-208. Legislative finding — Regional offices.
- 20-76-209. Payment of certain contributions and withholdings by Department of Human Services generally.

SECTION.

- 20-76-210. Payment of certain contributions and withholdings — Certain nursing home care projects.
- 20-76-211. Administrative Services — Client Specific Emergency Services Revolving Fund Paying Account.
- 20-76-212. Reimbursement rate to providers — Medicaid program.
- 20-76-213. Electronic benefit transfer system for food stamps.
- 20-76-214. Payment of certain contributions and withholdings — Transitional employment assistance.
- 20-76-215. [Deleted.]

Publisher's Notes. Acts 1939, No. 280, § 2, created a State Department of Public Welfare which consisted of a State Board of Public Welfare, a Commissioner of Public Welfare, and such other officials and employees as were authorized. Acts 1971, No. 38, § 12, transferred the State Department of Public Welfare and its functions, powers, and duties, by a type 2 transfer, to the Department of Social and

Rehabilitative Services. Acts 1977, No. 383, § 2, changed the name of the Arkansas Department of Social and Rehabilitative Services to the Department of Human Services.

Cross References. Care of insane paupers, § 20-47-108.

Effective Dates. Acts 1939, No. 280, § 41: Mar. 10, 1939. Emergency clause provided: "It is hereby ascertained and

declared to be a fact that there are many needy aged, dependent children, needy blind, crippled children and other dependent persons who are suffering for the want of care, hospitalization, medical attention and other comforts of life; that Federal Funds are available, if matched by State Funds; that the unfortunate of this State can obtain the necessary relief only by the remedies set up in this act. Therefore, an emergency is declared to exist, and this act being necessary for the immediate preservation of the public peace, health and safety, shall take effect and be in force and effect from and after its passage and approval."

Acts 1941, No. 274, § 8: approved Mar. 26, 1941. Emergency clause provided: "It is found by the General Assembly that the Social Security Board or other federal agencies cooperating with the State of Arkansas in aiding and assisting the aged, the blind, crippled children, etc., require a merit system or civil service plan for the employees of the Welfare Department who are paid in whole or in part with federal funds; that the Social Security Act requires that such records of said Department as concern assistance matters be held and treated as confidential; that the preservation of the public peace, health and safety require this act to go into effect without delay; an emergency is therefore declared and this act shall take effect and be in force from and after its passage."

Acts 1981, No. 934, § 43: July 1, 1981. Emergency clause provided: "It is hereby found and determined by the Seventy-Third General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1981 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1981 could work irreparable harm upon the proper administration and providing of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1981."

Acts 1985, No. 649, § 46: July 1, 1985. Emergency clause provided: "It is hereby found and determined by the Seventy-Fifth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1985 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1985 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1985."

Acts 1985, No. 772, § 19: July 1, 1985. Emergency clause provided: "It is hereby found and determined by the Seventy-Fifth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1985 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1985 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1985."

Acts 1989, No. 44 (1st Ex. Sess.), § 18: July 1, 1989. Emergency clause provided: "It is hereby found and determined by the Seventy-Seventh General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1989 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1989 could work irreparable harm

upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1989."

Acts 1992 (2nd Ex. Sess.), No. 3, § 8: Dec. 18, 1992. Emergency clause provided: "It is hereby found and determined by the Seventy-Eighth General Assembly meeting in extraordinary session, that the State of Arkansas must provide adequate health care to its indigent citizens, that if immediate measures are not taken, many Arkansans will be irreversibly emotionally and physically damaged by the removal of health care measures as provided under provisions of title XIX of the Social Security Act, for the state Medicaid Program and that it is in the interests of the people of the State of Arkansas to provide for these measures. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 134, § 6: July 1, 1993. Emergency clause provided: "It is hereby found and determined by the Seventy-Ninth General Assembly that the system used in Arkansas to administer the federal food stamp program has become cost-prohibitive, is subject to abuse, and is an ever-increasing burden on the state; that an electronic benefit transfer system, for which the federal government will pay fifty percent (50%) of the costs, is currently being used in several other states and has resulted in considerable savings; that the effectiveness of this Act on July 1, 1993, is essential for an electronic benefit transfer program to be in place as soon as possible; that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1993, could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after July 1, 1993."

Acts 1995, No. 1198, § 110: July 1,

1995. Emergency clause provided: "It is hereby found and determined by the Eightieth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1995 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1995 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety; Section 99 shall be in full force and effect from and after the date of passage and approval and the remainder of the Act shall be in full force and effect from and after July 1, 1995."

Acts 1997, No. 1360, § 132: July 1, 1997. Emergency clause provided: "It is hereby found and determined by the Eighty-First General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1997 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1997 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety, Section 115 shall be in full force and effect from and after the date of passage and approval and the remainder of the Act shall be in full force and effect from and after July 1, 1997."

Acts 1999, No. 1567, § 28: July 1, 1999. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the United States Congress has amended the laws pertaining to certain federally funded public assistance programs; that these programs are crucial to the life and health of many needy citizens of the State of

Arkansas who otherwise will be unable to obtain food, clothing, shelter, or medical care; that federal funds have already been appropriated for this program and any delays could work irreparable harm upon the proper administration of essential governmental programs and the State of

Arkansas may risk forfeiture of the federal funding; that this act so provides. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety, shall be in full force and effect on July 1, 1999."

RESEARCH REFERENCES

Am. Jur. 79 Am. Jur. 2d, Welfare, § 45 et seq.

C.J.S. 81 C.J.S., Soc. Sec., § 6 et seq.

20-76-201. Department of Human Services — Powers and duties.

The Department of Human Services shall:

(1) Administer all forms of public assistance, supervise agencies and institutions caring for dependent or mentally or physically disabled or aged adults, and administer other welfare activities or services that may be vested in it;

(2) Administer or supervise all child welfare activities in accordance with the rules and regulations of the department, including:

(A) The licensing and supervision of private and public child care agencies and institutions;

(B) The care of dependent, neglected, and delinquent children and children with mental or physical disabilities in foster family homes or in institutions; and

(C) The care and supervision of children placed for adoption;

(3) Enter into reciprocal agreements with public welfare agencies in other states relative to the provisions of relief and assistance to transients and nonresidents and cooperate with other state departments and with the federal government in studying labor, health, and public assistance problems involved in transiency;

(4) Administer and make effective the rules and regulations governing personnel administration, including the preparation and administration of classification and compensation plans and the method of selection for positions in the department:

(A) Develop and implement an internal training program to educate caseworkers and managers on the requirements of an effective Transitional Employment Assistance Program and the skills and knowledge required by their positions;

(B) Develop performance standards and bonus awards for all positions in the program focused on achieving the outcomes; and

(C) Remove or transfer employees from the program to other responsibilities within the department if they do not meet performance standards;

(5) Carry on research and compile statistics relative to public welfare programs throughout the state, including all phases of dependency,

defectiveness, delinquency, and related problems and develop plans in cooperation with other public and private agencies for the prevention as well as the treatment of conditions giving rise to public welfare problems;

(6) Assist other departments, agencies, and institutions of the state and federal governments, when so requested, by performing services in conformity with the purposes of this chapter;

(7) Cooperate with the federal government in matters of mutual concern pertaining to federally funded programs within the department's purview;

(8) Make any and all contracts and grants that may be necessary to carry out the purposes of this chapter and in accordance with rules and regulations developed by the department and subject to review, recommendation, and approval by the Arkansas Transitional Employment Board and subject to termination by the department as may be directed by the board;

(9) Make reports in the form and containing the information as the federal government from time to time may require and comply with provisions as the federal government from time to time may find necessary to assure the correctness and veracity of the reports;

(10) Allocate funds for the purposes and in accordance with the provisions of this chapter and rules and regulations as may be prescribed by the department and subject to review, recommendation, and approval by the board;

(11) Establish standards of eligibility for assistance developed by the department and subject to review, recommendation, and approval by the board;

(12) Receive, administer, disburse, dispose, and account for funds, commodities, equipment, supplies, and any kind of property given, granted, loaned, or advanced to the State of Arkansas for public assistance, public welfare, social security, or any other similar purposes;

(13) Make rules and regulations and take actions as are necessary or desirable to carry out the provisions of this chapter and which are not inconsistent therewith;

(14) Solicit participation of private organizations, nonprofit organizations, charitable organizations, and institutions of education in the delivery of services and in the enactment and revision of rules and regulations;

(15) Employ attorneys to represent the interests of the department;

(16)(A) The department shall develop a statewide transitional employment assistance transportation policy that emphasizes cost-effective, long-term solutions for the transportation challenges that face program recipients, former program recipients, and other poor Arkansas families.

(B) Transportation services under this policy shall include subsidized public transit, van-pooling, and subsidized vehicle purchase and maintenance plans, among others.

(C) The department shall coordinate with various planning organizations that receive federal assistance under the Job Access and Reverse Commute Program.

(D) The department shall provide technical assistance to local coalitions to help them develop local transportation plans; and

(17) Develop and implement automated statewide benefit delivery and information systems to achieve the purposes of this chapter.

History. Acts 1939, No. 280, § 7; A.S.A. 1947, § 83-109; Acts 1995, No. 710, § 6; 1997, No. 1058, § 5; 1999, No. 1567, § 10; 2001, No. 1264, § 6.

Amendments. The 1997 amendment rewrote the section.

The 1999 amendment added (4)(A)-(C); in (8), inserted "and grants," substituted "developed" for "made" and added "and subject to review, recommendation, and approval by the Arkansas Transitional Employment Board"; added "and subject to review, recommendation, and approval

by the board" at the end of (10); added "developed by the department and subject to review, recommendation, and approval by the board" in (11); rewrote (16); and made stylistic changes.

The 2001 amendment, in (4)(A), inserted "an internal," and deleted "and" at the end; and added "and subject to...by the board" in (8).

Cross References. Department of Human Services authorized to issue rules to assure compliance with federal statutes, rules, and regulations, § 25-10-129.

20-76-202. Department of Human Services — Public assistance — Temporary funding.

(a)(1) It is found and determined that the continued operations of the Department of Human Services, through its appropriate divisions, in accordance with the approved annual operations plan, are from time to time seriously impaired by either administrative oversights and delays by the Office of Grants Management of the United States Department of Health and Human Services or by the processes of federal fiscal year conversion.

(2) It is further found and determined that the delays in the proper preparation and transmittal of federal grant award authorizations and letter of credit instruments have created unnecessary hardships on the providers of services and the needy citizens of this state.

(b)(1) Therefore, upon certification of the pending availability of federal funding by the disbursing officer of the appropriate division of the Department of Human Services, the Chief Fiscal Officer of the State may grant temporary advances.

(2) The Chief Fiscal Officer of the State shall recover within a period of twenty (20) days the temporary advances upon receipt of the grant award authorizations or letter of credit instruments.

(c) No person in the State of Arkansas shall be excluded from participation in or be subjected to discrimination under any program or activity enumerated in this section on the ground of race, color, sex, disability, religion, or national origin.

History. Acts 1981, No. 934, §§ 31, 36; A.S.A. 1947, §§ 83-109.1, 83-124.2; Acts 1997, No. 1058, § 6.

Amendments. The 1997 amendment rewrote (b)(1).

20-76-203. [Repealed.]

Publisher's Notes. This section, concerning public assistance and legal assistants for the Department of Human Services, was repealed by Acts 1997, No.

1058, § 31. The section was derived from Acts 1965, No. 572, §§ 1-4, 6; 1969, No. 371, §§ 1-3; A.S.A. 1947, §§ 83-108.1 — 83-108.4, 83-108.6.

20-76-204. County offices — Powers and duties.

(a) The appropriate division of the Department of Human Services shall have authority to receive, disburse, and account for funds from the division, county, state, or any other source for purposes and plans approved by the division in accordance with the rules and regulations established by the division.

(b) The appropriate division is empowered to receive and disburse funds received from the department for general relief purposes. The funds shall be spent and accounted for by the county offices in accordance with the rules, regulations, and policies of the department pertaining to the granting of assistance and relief.

(c) The appropriate division is authorized to establish a county welfare fund from which fund the county offices are authorized to make such disbursements and expenditures for general relief as may be necessary to carry out the purposes of this act and in accordance with the rules and regulations of the Department of Human Services.

History. Acts 1939, No. 280, § 13; A.S.A. 1947, § 83-116.

Meaning of "this act". Acts 1939, No. 280, codified as §§ 9-27-101, 20-76-101,

20-76-201, 20-76-204, 20-76-206 [repealed], 20-76-207, 20-76-401, 20-76-403, 20-76-405 — 20-76-410, 20-76-419, 20-76-424, 20-76-428 — 20-76-433, 20-76-435.

20-76-205. Use of unspent federal assistance.

(a) At the end of each cost allocation close-out period following the end of each federal fiscal year, the Department of Human Services and the Arkansas Transitional Employment Board shall take all steps necessary to maximize the availability and use of any unspent federal Temporary Assistance to Needy Families funds to spend on subsidized child care for transitional employment assistance and other low-income families during the next federal fiscal year.

(b) This provision shall be subject to federal law and regulations governing the use of Temporary Assistance to Needy Families block grant funds.

History. Acts 2001, No. 1264, § 11.

Publisher's Notes. Former § 20-76-205, concerning merit systems, was re-

pealed by Acts 1987, No. 906, § 1. That section was derived from Acts 1941, No. 274, § 2; A.S.A. 1947, § 83-121.

20-76-206. [Repealed.]

Publisher's Notes. This section, concerning merit systems, was repealed by Acts 1987, No. 906, § 1. The section was

derived from Acts 1939, No. 280, § 36; A.S.A. 1947, § 83-122.

20-76-207. Political activity.

(a)(1) No officer or employee of the appropriate division of the Department of Human Services or of a county office shall use his or her official authority to influence or permit the use of the program administered by the division or the county offices for the purpose of interfering with an election or affecting the results thereof or for any political purpose.

(2) No officer or employee shall devote his or her office hours, or efforts during office hours, towards any partisan political activity, nor shall any activity be conducted upon the premises of the employee or officer's agency, commission, or board.

(3) Furthermore, no communication, vehicles, stationery, or other material property of the State of Arkansas shall be utilized for any partisan political activities by the officers or employees.

(4) No officer or employee shall conduct himself or herself in such a manner during allowable political activity so as to reflect that his or her position is that of the State of Arkansas, or his or her agency, commission, or board.

(b)(1) Except as noted otherwise in this section or as necessary to meet the requirements of federal law as pertains to employees, no restrictions shall be imposed upon the political freedoms of an officer or employee.

(2) No officer or employee shall be deprived either of his or her right to vote or expression of opinion as a citizen on political subjects.

(c)(1) No officer or employee shall solicit or receive directly or indirectly any political funds or contributions from other officers or employees of that agency; nor shall any officer or employee be obliged to contribute or render services, assistance, subscriptions, assessments, or contributions for any political purposes.

(2) However, during nonduty hours and away from state premises, an officer or employee may communicate through the mails requests for political support from the public at large which may include officers and employees of the agency.

(d) Any officer or employee of the division or of a county office violating this provision shall be subject to discharge or suspension or such other disciplinary measures as may be provided by the rules and regulations of the division.

History. Acts 1939, No. 280, § 16; 1941, No. 274, § 5; 1979, No. 568, § 1; A.S.A. 1947, § 83-119. **Cross References.** Political activity of public employees permitted, § 21-1-207.

20-76-208. Legislative finding — Regional offices.

(a) It is hereby found and determined by the Seventy-Seventh General Assembly that regional offices tend to create inefficiency in the operation of the programs and services provided by the department.

(b) Therefore, no office of the Department of Human Services shall be called a regional office, nor shall any function of any office, other than

the Department of Human Services Central Office, include supervision of any district department office.

History. Acts 1989 (1st Ex. Sess.), No. 44, § 11.

A.C.R.C. Notes. Former § 20-76-208, concerning regional Department of Human Services offices, is deemed to be superseded by this section. The former sec-

tion was derived from Acts 1987, No. 921, § 14. A similar provision, which was also codified as § 20-76-208 and was previously superseded, was derived from Acts 1985, No. 649, § 31; A.S.A. 1947, § 83-120.1.

20-76-209. Payment of certain contributions and withholdings by Department of Human Services generally.

(a) The appropriate division of the Department of Human Services is authorized to pay the employer's portion of contributions and withholdings required by the federal and state income tax laws, the Federal Insurance Contributions Law, the Workers' Compensation Law, § 11-9-101 et seq., and the Arkansas Employment Security Law, § 11-10-101 et seq., in all cases wherein the recipient has been determined to be the employer of the provider and, as such, required to withhold an amount from the employee's wage and contribute an amount based upon the wages under the provisions of the above enumerated acts.

(b) The appropriate division shall report, pay, or contribute the amounts from the appropriation for paying grants under the program concerned.

History. Acts 1985, No. 649, § 24; A.S.A. 1947, § 83-102.2.

U.S. Code. The Federal Insurance

Contributions Act, referred to in this section, is codified as 26 U.S.C. § 3101 et seq.

20-76-210. Payment of certain contributions and withholdings — Certain nursing home care projects.

(a) The appropriate division of the Department of Human Services is authorized to pay the employer's portion of contributions and withholdings required by the federal and state income tax laws, the Federal Insurance Contributions Act, the Workers' Compensation Law, § 11-9-101 et seq., and the Arkansas Employment Security Law, § 11-10-101 et seq., in all cases wherein the homemaker and home health aid trainee is participating in the subsidized employment project to prevent premature nursing home care.

(b) The appropriate division shall report, pay, or contribute the amounts from the appropriation for paying grants under this project.

(c) Beneficiaries or trainees under this program shall not be eligible to participate in the Arkansas Public Employees Retirement System but shall be entitled to receive sick and vacation leave as provided for state employees.

History. Acts 1985, No. 649, § 37; A.S.A. 1947, § 83-102.3.

Publisher's Notes. Acts 1985, No. 649, § 37 provided, in part, that the Division of

Social Services (now an appropriate division of the Department of Human Services) was authorized to pay all administrative costs, including state retirement for all employees administering the grant from this appropriation.

U.S. Code. The Federal Insurance Contributions Act, referred to in this section, is codified as 26 U.S.C. § 3101 et seq.

20-76-211. Administrative Services — Client Specific Emergency Services Revolving Fund Paying Account.

(a) The Division of Administrative Services of the Department of Human Services is hereby authorized to establish and maintain as a cash fund account the Client Specific Emergency Services Revolving Fund Paying Account consisting of federal grants, aids, cash donations, reimbursements, and state general revenue, not to exceed a daily balance of ten thousand dollars (\$10,000), for delivery of immediate care, short-term, or emergency services to eligible clients.

(b) The account shall be established and maintained in accordance with procedures established by the Chief Fiscal Officer of the State for cash funds and shall be administered under the direction of the Director of the Department of Human Services.

History. Acts 1985, No. 772, § 9; 1995, No. 1198, § 64; 1997, No. 1360, § 66.

Publisher's Notes. Acts 1995, No. 1198, § 64 is also codified as § 19-5-1077.

Amendments. The 1997 amendment deleted the comma following "reimbursement" in (a).

U.S. Code. The reference to Title XX is a reference to Title XX of the Social Security Act which is codified as 42 U.S.C. § 1397 et seq.

20-76-212. Reimbursement rate to providers — Medicaid program.

Notwithstanding any other provision in federal law or departmental commitment which may exist to the contrary, the Department of Human Services shall not increase any reimbursement rate to any provider or provider groups supported in whole or in part by funds administered by the Department of Human Services, nor shall it adopt any other rule, regulation, or amendment to the Arkansas Medicaid program that would result in an obligation of the general revenues of the state without first seeking and receiving the approval of the Governor and the Chief Fiscal Officer of the State.

History. Acts 1992 (2nd Ex. Sess.), No. 3, § 3.

20-76-213. Electronic benefit transfer system for food stamps.

The Division of Medical Services of the Department of Human Services shall establish a program utilizing an electronic benefit transfer system for the distribution and redemption of food stamps,

whereby food stamp recipients will no longer use paper coupons to participate in the federal food stamp program.

History. Acts 1993, No. 134, § 2.

A.C.R.C. Notes. As enacted, Acts 1993, No. 134, § 2 also provided that: "The Director of the Economic & Medical Services Division of the Department of Human Services shall report on the status of the program to the Joint Interim Committee on Public Health, Welfare, and Labor by July 15, 1994."

Publisher's Notes. Acts 1993, No. 134, § 1, provided: "LEGISLATIVE PURPOSE. The Seventy-Ninth General Assembly hereby acknowledges that the federal food stamp program as it is now

administered in Arkansas is subject to misuse and is demeaning to recipients. There are, however, electronic benefit transfer systems being used in other states that are more cost-effective, less subject to abuse, and are generally better-received by retailers and food stamp recipients. It is the purpose of this Act to establish a program utilizing an electronic benefit transfer system, whereby food stamp recipients use a card similar to a credit card instead of paper coupons to participate in the federal food stamp program."

20-76-214. Payment of certain contributions and withholdings — Transitional employment assistance.

(a) The Department of Human Services is authorized to pay the employer's portion of contributions and withholdings required by the federal and state income tax laws, the Federal Insurance Contributions Act, the Workers' Compensation Law § 11-9-101 et seq., the Arkansas Employment Security Law § 11-10-101 et seq., and private medical insurance premiums for eligible individuals where that is necessary to achieve employment assistance.

(b)(1) Transitional employment assistance recipients shall not be deemed to be state employees solely as a consequence of receiving transitional employment assistance benefits and shall not be eligible to participate in the Arkansas Public Employees Retirement System solely as a consequence of receiving transitional employment assistance benefits;

(2) Transitional employment assistance recipients who are employed by the state shall be eligible for the same benefits as an employee who performs similar work and is not a transitional employment assistance recipient.

History. Acts 1997, No. 1058, § 7.

20-76-215. [Deleted.]

A.C.R.C. Notes. Former § 20-76-215, regarding Administrative Services and the Client Specific Emergency Services Revolving Fund Paying Account, was

identical to § 20-76-211 and has been deleted at the direction of the Arkansas Code Revision Commission. The section was derived from Acts 1997, No. 1360, § 66.

SUBCHAPTER 3 — SOCIAL SECURITY DISABILITY DETERMINATION

SECTION.

20-76-301. State Department for Social Security Administration Disability Determination — Creation.

20-76-302. State Department for Social Security Administration Disability Determination — Director — Bonds.

20-76-303. State Department for Social Security Administration

SECTION.

Disability Determination and director — Powers and duties.

20-76-304. Validation of contracts between State of Arkansas and United States.

20-76-305. Federal Disability Determination Fund — Creation.

20-76-306. Use of subpoenas in hearings on benefit determinations.

Effective Dates. Acts 1961 (2nd Ex. Sess.), No. 14, § 12: Oct. 10, 1961. Emergency clause provided: "It is hereby found and determined by the General Assembly that the volume of cases for disability determination under OASI is increasing and that a higher degree of service can be rendered by the establishment of a separate State department for handling the program. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety, shall take effect and be in full force from and after its passage and approval."

Acts 1965, No. 177, § 2: July 1, 1965.

Acts 1999, No. 4, § 5: Jan. 26, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly, that existing law

hinders the ability of the State Department for Social Security Administration Disability Determination to conduct investigations into benefit determination and benefit fraud; and any delay in the effective date of this act could cause harm to the State of Arkansas. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

20-76-301. State Department for Social Security Administration Disability Determination — Creation.

There is created and established at the seat of government of this state a department of state to be designated and known as the State Department for Social Security Administration Disability Determination.

History. Acts 1961 (2nd Ex. Sess.), No. 14, § 1; 1965, No. 177, § 1; A.S.A. 1947, § 83-801.

20-76-302. State Department for Social Security Administration Disability Determination — Director — Bonds.

(a) The executive head of the State Department for Social Security Administration Disability Determination is designated as the director.

(b) The director shall be a resident elector of this state at least thirty (30) years of age, of good moral character, and of demonstrated ability in the field of his or her employment.

(c) The director shall be appointed by and serve at the pleasure of the Governor.

(d) Before entering upon his or her duties of employment, the director shall take, subscribe, and file in the office of the Secretary of State an oath or affirmation to support the United States Constitution and the Arkansas Constitution and to faithfully discharge the duties of employment upon which he or she is about to enter.

(e) The director shall furnish bond with a corporate surety thereon to the State of Arkansas in the penal sum of twenty-five thousand dollars (\$25,000) conditioned upon the faithful performance of his or her duties and for the proper accounting of all funds received and disbursed by him or her. The original of the bond shall be filed in the office of the Secretary of State, and an executed counterpart of the surety bond shall be filed in the office of the Auditor of State.

(f) The director shall be disbursing agent for the department but shall not be required to furnish additional bond as the disbursing agent.

(g) Other employees of the department required by the director to do so shall furnish and file bonds, conditioned as above, or fidelity bonds with the director. These bonds shall be in such penal sums as shall be determined by the director.

(h) The premiums on all such bonds shall be paid from appropriations made available to the department.

History. Acts 1961 (2nd Ex. Sess.), No. 14, §§ 2, 3; A.S.A. 1947, §§ 83-802, 83-803.

A.C.R.C. Notes. The operation of the bond requirement of this section was suspended by adoption of a self-insured fidel-

ity bond program for public officers, officials and employees, effective July 20, 1987, pursuant to § 21-2-701 et seq. The requirement may again become effective upon cessation of coverage under that program. See § 21-2-703.

20-76-303. State Department for Social Security Administration Disability Determination and director — Powers and duties.

It shall be the function, power, and duty of the State Department for Social Security Administration Disability Determination, or the director thereof:

(1) To enter into agreements with the United States Department of Health and Human Services and the Secretary of Health and Human Services whereby the department, with respect to all individuals in this state, or with respect to such classes of individuals in this state as may be designated in the agreement, will, in the case of any individual, determine whether or not he or she is under a disability and of the day the disability began and of the day on which the disability ceased. For the purposes hereof, the term "disability" shall be as defined in any agreement or by applicable law;

(2) To accept and deposit in the State Treasury any funds from whatever source received and to withdraw therefrom such funds as may be required to carry out its functions, powers, and duties and, with respect thereto, to comply fully with the General Accounting and Budgetary Procedures Law, § 19-4-101 et seq., and the Arkansas Procurement Law, § 19-11-201 et seq., and, where more restrictive, with the terms of any agreement entered into with the secretary in relation to the use of any funds made available to the department by the United States of America, or by any department or agency thereof. However, the department shall not have the authority to commit this state, either directly or indirectly, to the expenditure of any state funds in the absence of specific authority granted by the General Assembly;

(3) To take such other action, not inconsistent with law, as shall be necessary or desirable to carry out effectively the purposes and intent of this subchapter.

History. Acts 1961 (2nd Ex. Sess.), No. 14, § 4; A.S.A. 1947, § 83-804.

Publisher's Notes. Acts 1961 (2nd Ex. Sess.), No. 14, § 6, provided that the State Board for Vocational Education and the Director of Rehabilitation Service should be divested of all functions, powers, and duties relating to the subject matter of this subchapter which should be transferred to the Director of the State Depart-

ment for Social Security Administration Disability Determination and that the director should take over all records, files, books, papers, furniture, fixtures, and equipment relating to the subject matter.

For federal law authorizing agreements between state and federal government permitting state to make determination of disability, see 42 U.S.C. § 421.

20-76-304. Validation of contracts between State of Arkansas and United States.

(a) Any executory contract or agreement, or applicable part thereof, entered into by and between this state, or any officer or agency thereof, and the United States, or any officer or agency thereof, in relation to the subject matter of this subchapter is validated, ratified, and confirmed in all respects. However, on and after October 10, 1961, the State Department for Social Security Administration Disability Determination shall be substituted for the state agency named in any contract or agreement in relation to the subject matter of this subchapter.

(b) However, nothing contained in this section shall be construed as an abridgement of the right of the department, or of the director thereof, to enter into a new agreement to succeed to any executory contract or agreement in relation to the subject matter of this subchapter.

History. Acts 1961 (2nd Ex. Sess.), No. 14, § 5; A.S.A. 1947, § 83-805.

20-76-305. Federal Disability Determination Fund — Creation.

There is created and established in the State Treasury a fund to be designated and known as the Federal Disability Determination Fund,

and all moneys received for these purposes shall be deposited in the fund.

History. Acts 1961 (2nd Ex. Sess.), No. 14, § 7; A.S.A. 1947, § 83-807.

20-76-306. Use of subpoenas in hearings on benefit determinations.

(a) The Director of the State Department for Social Security Administration Disability Determination or the counsel for the agency is authorized to require the attendance of witnesses and the production of books, records, or other documents through the issuance of subpoenas when the testimony or information is necessary to adequately present the position of the State Department for Social Security Administration Disability Determination when making fair hearing determinations or conducting investigations relating to public assistance benefits.

(b) Subpoenas issued pursuant to the authority of the director shall be substantially in the following form:

"The State of Arkansas to the Sheriff of _____ County: You are commanded to subpoena (name), (address) to appear at _____ on (date) at (time), and testify and/or produce the following documents, to wit: _____ in a matter of (style of proceeding).

WITNESS my hand on (date).

(Signature of director or agency counsel)."

History. Acts 1999, No. 4, § 1.

SUBCHAPTER 4 — GRANTS OF ASSISTANCE

SECTION.

20-76-401. Eligibility generally — Transitional Employment Assistance program.

20-76-402. Work activities.

20-76-403. Application — Fraud.

20-76-404. Duration of assistance — Extended support services.

20-76-405. Diversion from assistance.

20-76-406. Alternative benefits.

20-76-407. Micro-lending program and individual development accounts.

20-76-408. Appeal to Department of Human Services.

20-76-409. Disqualification and sanction.

20-76-410. Administrative sanctions — Transitional employment assistance.

20-76-411. [Repealed.]

20-76-412. Abandonment — Duties of De-

SECTION.

partment of Human Services.

20-76-413 — 20-76-417. [Repealed.]

20-76-418. Foster care — Reduction in long-term care.

20-76-419. Blind persons generally.

20-76-420. Blind persons — Choice of eye care.

20-76-421. Aged and blind persons generally.

20-76-422. Aged, blind, and disabled — Conversion from state to federal program.

20-76-423. Aged, blind, and disabled — Supplemental Security Income.

20-76-424 — 20-76-428. [Repealed.]

20-76-429. Receipt of additional property or income by assistance recipient.

SECTION.

- 20-76-430. [Repealed.]
 20-76-431. Transfer of property prohibited.
 20-76-432. Removal to another county.
 20-76-433. Records — Confidentiality.
 20-76-434. Maintenance of list of recipients.
 20-76-435. No entitlement to assistance.
 20-76-436. Recovery of benefits from recipients' estates.
 20-76-437. Reporting — Transitional employment assistance.
 20-76-438. Purpose.

Cross References. Nonsupport, Criminal Code, § 5-26-401 et seq.

Preambles. Acts 1959, No. 301 contained a preamble which read: "Whereas, the average grant of persons receiving public assistance in the State of Tennessee is Forty Four Dollars (\$44.00), and

"Whereas, the average grant for persons receiving public assistance in the state of Mississippi is Twenty-Nine Dollars (\$29.00), and

"Whereas, the average grant for persons receiving public assistance in the State of Arkansas is Fifty Dollars (\$50.00), and

"Whereas, persons are moving from the states of Tennessee and Mississippi to the State of Arkansas for the sole reason of receiving a greater amount of public assistance than they had received in their home state, and

"Whereas, this influx of sub-marginal persons from the states of Tennessee and Mississippi to the State of Arkansas results in lowering the amount of assistance that the State of Arkansas can give to persons who have spent most of their life in this state,

"Now, Therefore"

Acts 1981, No. 246 contained a preamble which read: "Whereas, Public Law 96-272 requires all states to enact legislation by October 1, 1982 to set goals beginning with fiscal year 1983 as to the maximum number of children who will continue to receive payment under Title IV-E of the Social Security Act;

"Now, therefore"

Effective Dates. Acts 1939, No. 280, § 41: Mar. 10, 1939. Emergency clause provided: "It is hereby ascertained and declared to be a fact that there are many

SECTION.

- 20-76-439. Self-sufficiency — Assessments, personal responsibility agreements, and supportive services.
 20-76-440. [Repealed.]
 20-76-441. Transitional employment assistance postemployment information and referral program.
 20-76-442. Transitional employment assistance customer service review program.
 20-76-443. Education and training.

needy aged, dependent children, needy blind, crippled children and other dependent persons who are suffering for the want of care, hospitalization, medical attention and other comforts of life; that Federal Funds are available, if matched by State Funds; that the unfortunate of this State can obtain the necessary relief only by the remedies set up in this act. Therefore, an emergency is declared to exist, and this act being necessary for the immediate preservation of the public peace, health and safety, shall take effect and be in force and effect from and after its passage and approval."

Acts 1941, No. 274, § 8: approved Mar. 26, 1941. Emergency clause provided: "It is found by the General Assembly that the Social Security Board or other federal agencies cooperating with the State of Arkansas in aiding and assisting the aged, the blind, crippled children, etc., require a merit system or civil service plan for the employees of the Welfare Department who are paid in whole or in part with federal funds; that the Social Security Act requires that such records of said Department as concern assistance matters be held and treated as confidential; that the preservation of the public peace, health and safety require this act to go into effect without delay; an emergency is therefore declared and this act shall take effect and be in force from and after its passage."

Acts 1949, No. 192, § 3: Feb. 28, 1949. Emergency clause provided: "Since there are now many applicants on waiting lists who are in dire need of the necessities of life and who have been on such lists for many months and since this condition is

against the public health, peace and safety of many citizens of the State, therefore, an emergency is declared to exist and this act shall go into full force and effect from and after its passage and approval."

Acts 1951, No. 229, § 2: Mar. 1, 1951. Emergency clause provided: "Whereas, it is ascertained that a large number of persons have assigned or transferred their property for the purpose of rendering themselves eligible for assistance grants from the State Welfare Department; therefore, an emergency is found to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after passage and approval."

Acts 1951, No. 308, § 3: Mar. 19, 1951. Emergency clause provided: "It is hereby ascertained and declared to be a fact that there are many needy aged, dependent children, needy blind, crippled children, and other dependent persons who are suffering for the want of care, hospitalization, medical attention and other comforts of life; that the federal funds are available, if matched by state funds; that the unfortunate of this state can obtain necessary relief only by the remedy set up in this act. Therefore, an emergency is declared to exist, and this act being necessary for the immediate preservation of the public peace, health and safety, shall take effect and be in force and effect from and after its passage and approval."

Acts 1951, No. 309, § 3: Mar. 19, 1951. Emergency clause provided: "It is hereby ascertained and declared to be a fact that there are many permanently and totally disabled persons who are in need of food and other necessities of life; that federal funds are available, if matched by state funds; that the needy permanently and totally disabled persons can obtain the necessary relief only by remedy set up in this act. Therefore, an emergency is declared to exist, and this act being necessary for the immediate preservation of the public peace, health and safety, shall take effect and be in force from and after its passage and approval."

Acts 1953, No. 231, § 10: Mar. 6, 1953. Emergency clause provided: "Whereas many acts of family desertion have thrown the burden of supporting their family upon the State and the existing laws provide no means by which the State

can recover such payments from a divorced spouse who has refused or neglects to pay support, or from illegitimate fathers or mothers who refuse to support their children and whereas it has been found that cases certified by Welfare officials to the Deputy Prosecuting Attorneys and other prosecuting officials have become a pressing burden on said officials and have resulted in little or no remuneration to said officials, resulting in the neglecting of said cases causing great financial losses under present laws of Welfare payments to dependents of able bodied parents and whereas, H. R. 6000 as passed by Congress requires that the various States must provide for prompt notice to appropriate law enforcement officials in any case in which Federal Aid is furnished a child who has been deserted or abandoned by a parent and whereas the rapid increase in the number of persons receiving public assistance is preventing the State from rendering adequate assistance to those most deserving of assistance and who have no other source of assistance; and whereas it is essential to the public health, safety and interest that these conditions be remedied an emergency is hereby declared to exist, and this act shall be in effect from and after its approval."

Acts 1961, No. 257, § 2: July 1, 1962.

Acts 1963, No. 7, § 2: Feb. 4, 1963. Emergency clause provided: "Whereas, Federal legislation has authorized Federal moneys to be paid on a matching basis to the various states to Seventy Dollars (\$70.00) per month, and whereas, the present maximum payment is now Sixty-Five Dollars (\$65.00) per month, and whereas, there are many cases in the State where the needs of the old persons have not been met by the welfare grant, and whereas, the authorized increase has been given to persons who receive lower welfare grants, and whereas, old persons who maintain their own households are more in need of an increase in their grant than persons who are living with relatives, and whereas, at the present time, we are penalizing old persons who are living by themselves, therefore, an emergency is declared to exist and this Act, being necessary for preservation of the public peace, health, safety and welfare, shall take effect and be in force from the date of its approval."

Acts 1963, No. 8, § 2: Feb. 4, 1963.

Emergency clause provided: "Whereas, Federal legislation has authorized Federal moneys to be paid on a matching basis to the various states to Seventy Dollars (\$70.00) per month, and whereas, the present maximum payment is now Sixty-Five Dollars (\$65.00) per month, and whereas, there are many cases in the State where the needs of the blind persons have not been met by the welfare grant, and whereas, the authorized increase has been given to persons who receive lower welfare grants, and whereas, blind persons who maintain their own households are more in need of an increase in their grant than persons who are living with relatives, and whereas, at the present time, we are penalizing blind persons who are living by themselves, therefore, an emergency is declared to exist and this Act, being necessary for preservation of the public peace, health, safety and welfare, shall take effect and be in force from the date of its approval."

Acts 1963, No. 28, § 3: July 1, 1963.

Acts 1965, No. 66, § 3: Feb. 12, 1965. Emergency clause provided: "Whereas, it is anticipated that Federal legislation may authorize an increase in Federal moneys to be paid on a matching basis to the various states for old age assistance grants during the next biennium, and whereas, the present maximum payment is now Eighty-Five Dollars (\$85.00) per month, and whereas, there are many cases in the State where the needs of the old persons have not been met by the welfare grant, and whereas, this Act is necessary in order to take advantage of any increase in Federal moneys to be paid on a matching basis during the next biennium so that the needs of the old persons of this State may be more adequately met; therefore, an emergency is declared to exist and this Act, being necessary for the immediate preservation of the public peace, health, safety and welfare, shall be in full force and effect from and after its passage and approval."

Acts 1965 (1st Ex. Sess.), No. 34, § 5: approved June 9, 1965. Emergency clause provided: "Whereas, it is anticipated that Federal legislation may be enacted by the Federal Government to authorize an increase in Federal moneys to be paid on a matching basis to the various states for old age assistance, aid to the blind and aid to dependent children during the next

biennium, wherein payments to old age recipients and recipients of aid to the blind may be paid when the recipients are inmates of tax supported institutions under certain conditions, and

"Whereas, Federal legislation may allow grants to be paid to minors between the ages of 18 and 21 who are attending high school or receiving vocational training, and

"Whereas, there are many cases in the State where the needs of old persons, blind persons and dependent children have not been met by the welfare grant due to restrictions on payments of a grant into institutions and due to restrictions on the age limit for payment to dependent children, and

"Whereas, this Act is necessary in order to take advantage of any increase in Federal moneys to be paid on a matching basis during the next biennium so that the needs of old persons and blind persons in institutions of this State may be more adequately met and the needs of dependent children who are attempting to finish a high school education or receive vocational training when they are over 18 years of age and under 21 years of age may be more adequately met; therefore, an emergency is declared to exist and this Act, being necessary for the immediate preservation of the public peace, health, safety and welfare, shall be in full force and effect from and after its passage."

Acts 1967, No. 374, § 6: Mar. 15, 1967. Emergency clause provided: "It is hereby found and determined by the General Assembly that in order to comply with applicable federal regulations, it is immediately necessary that the residence requirements for eligibility for public welfare assistance be repealed. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1971, No. 448, § 3: Mar. 29, 1971. Emergency clause provided: "It is hereby found and determined by the General Assembly that the amount of assistance grants for the maintenance of various classes of recipients in nursing homes is presently established as a maximum sum; that the rising cost of living and spiralling inflation rate renders such sums inadequate to properly care for nursing home

patients and that a more flexible standard should be applied; and that only by the passage of this Act can this be accomplished. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the immediate preservation of the public peace, health and safety, shall become effective from and after its passage and approval."

Acts 1974 (Ex. Sess.), No. 56, § 5: July 1, 1974. Emergency clause provided: "It is hereby found and determined by the Sixty-Ninth General Assembly, meeting in Extraordinary Session, that the effectiveness of this Act of July 1, 1974 is necessary for the extension of medical assistance to patients of State-operated institutions. Therefore, an emergency is declared to exist, and this Act being essential for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from July 1, 1974."

Acts 1975, No. 918, § 24: July 1, 1975. Emergency clause provided: "It is hereby found and determined by the Seventieth General Assembly that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1975 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1975 could work irreparable harm upon the proper administration and providing of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after July 1, 1975."

Acts 1979, No. 667, § 6: Mar. 30, 1979. Emergency clause provided: "It is hereby found by the General Assembly that there are able-bodied individuals who have refused employment and are presently receiving welfare benefits which are paid in part by the State of Arkansas, that in so receiving these benefits, they are creating a great financial strain on the State and are depriving those that are more needy and worthy of receiving these funds, and that only by the immediate passage of this Act can these conditions be bettered. Therefore, an emergency is hereby de-

clared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1981, No. 934, § 43: July 1, 1981. Emergency clause provided: "It is hereby found and determined by the Seventy-Third General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1981 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1981 could work irreparable harm upon the proper administration and providing of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1981."

Acts 1985, No. 649, § 46: July 1, 1985. Emergency clause provided: "It is hereby found and determined by the Seventy-Fifth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1985 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1985 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1985."

Acts 1999, No. 1567, § 28: July 1, 1999. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the United States Congress has amended the laws pertaining to certain federally funded public assistance programs; that these programs are crucial to the life and health of many needy citizens of the State of

Arkansas who otherwise will be unable to obtain food, clothing, shelter, or medical care; that federal funds have already been appropriated for this program and any delays could work irreparable harm upon the proper administration of essential governmental programs and the State of

Arkansas may risk forfeiture of the federal funding; that this act so provides. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety, shall be in full force and effect on July 1, 1999."

RESEARCH REFERENCES

ALR. Tax refund as income or resource to be considered in determining eligibility for benefits under Aid to Families with Dependent Children program. 3 ALR 4th 1074.

Eligibility for welfare benefits, under maximum-assets limitations, as affected by expenditures or disposal of assets. 19 ALR 4th 146.

Eligibility for welfare benefits as affected by claimant's status as trust beneficiary. 21 ALR 4th 729.

Criminal liability under state laws in connection with application for or receipt of public welfare benefits. 22 ALR 4th 534.

Right to credit on child support payments for Social Security or other government dependency payments made for benefit of child, 34 ALR 5th 447.

Am. Jur. 79 Am. Jur. 2d, Welfare, § 45 et seq.

C.J.S. 81 C.J.S., Soc. Sec., §§ 18 — 31 and § 94 et seq.

20-76-401. Eligibility generally — Transitional Employment Assistance program.

(a) The Department of Human Services shall administer a program of transitional employment assistance. Eligible applicants shall receive one (1) or more of the following: assessment services, employment assistance, support services, medical assistance, a positive reinforcement outcome bonus, relocation assistance, and extended support services.

(b) Eligibility for transitional employment assistance is limited to applicants for or recipients of assistance who:

- (1) Have care and custody of a related minor child;
- (2) Reside in the state at the time of application for assistance;
- (3) Have applied for child support services, when applicable, with a local child support enforcement office at the time of application for assistance and who comply and cooperate with all applicable requirements of that office, including, but not limited to, assignment of benefits to the department;
- (4) Participate in an approved work activity, including complying with an employment plan, unless deferred or exempt from work activity requirements;
- (5) Are citizens of the United States, are qualified aliens lawfully present in the United States before August 22, 1996, are qualified aliens who physically entered the United States on or after August 22, 1996, and have been in qualified immigrant status for at least five (5) years, or are aliens to whom benefits under Temporary Assistance for Needy Families must be provided under federal law;
- (6) Are income and resource eligible; and

(7) Sign and comply with a personal responsibility agreement.

(c) The department shall promulgate regulations to determine resource eligibility and benefit levels for participating families. The regulations shall be subject to review, recommendation, and approval by the Arkansas Transitional Employment Board and shall include, but not be limited to, the following categories of income and resource disregards:

(1) To reward work, earned income from sources other than transitional employment assistance;

(2) A certain percentage of a family's gross monthly income;

(3) The family's homestead;

(4) An operable motor vehicle per family;

(5) Household and personal goods;

(6) Income-producing property;

(7) Moneys deposited in an approved individual development account or approved escrow account for business or career development; and

(8) Any other property or resource specified in the transitional employment assistance implementation plan which is determined to be cost efficient to exclude or which must be excluded due to federal or state law.

(d) Any person who makes an application for assistance shall have the burden of proving eligibility for such assistance.

History. Acts 1939, No. 280, § 18; 1951, No. 229, § 1; 1953, No. 177, § 1; 1959, No. 301, § 1; A.S.A. 1947, §§ 83-123 — 83-123.2; Acts 1997, No. 1058, § 8; 1999, No. 1567, § 11.

Amendments. The 1997 amendment rewrote the section.

The 1999 amendment redesignated former (e) as present (d); substituted "ad-

minister" for "establish" in (a); in (b)(5), substituted "August 22, 1996" for "August 23, 1996" and inserted "are qualified aliens...at least five (5) years"; inserted "be subject to review, recommendation, and approval by the Arkansas Transitional Employment Board and shall" in (c); and made stylistic changes.

20-76-402. Work activities.

(a) The Department of Human Services shall develop and describe categories of approved work activities for transitional employment assistance recipients in accordance with this section. The regulations shall be subject to review, recommendation, and approval by the Arkansas Transitional Employment Board. Approved work activities may include unsubsidized employment, subsidized private sector employment, subsidized public sector employment, education or training, vocational educational training, skills training, job search and job readiness assistance, on-the-job training, micro enterprise, community service, and work experience. For purposes of this section:

(1) "Unsubsidized employment" is full-time employment or part-time employment that is not directly supplemented by federal or state funds;

(2)(A) "Subsidized private sector employment" is employment in a private for-profit enterprise or a private not-for-profit enterprise

which is directly supplemented by federal or state funds. A program recipient in subsidized private sector employment shall be eligible for the same benefits as a nonsubsidized employee who performs similar work. Prior to receiving any subsidy or incentive, an employer shall enter into a written contract with the department which may include, but not be limited to, provisions addressing any of the following:

- (i) Payment schedules for any subsidy or incentive such as deferred payments based on retention of the recipient in employment;
- (ii) Durational requirements for the employer to retain the recipient in employment;
- (iii) Training to be provided to the recipient by the employer;
- (iv) Contributions, if any, made to the recipient's individual development account; and
- (v) Weighting of incentive payments proportionally to the extent to which the recipient has limitations associated with the long-term receipt of welfare and difficulty in sustaining employment. In establishing incentive payments, the department shall consider the extent of the recipient's prior receipt of welfare, lack of employment experience, lack of education, lack of job skills, and other appropriate factors.

(B) The department may require an employer to repay some or all of a subsidy or incentive previously paid to an employer under the program unless the recipient is terminated for cause;

(3)(A) "Subsidized public sector employment" is employment by an agency of the federal, state, or local government which is directly supplemented by federal or state funds. A program recipient in subsidized public sector employment shall be eligible for the same benefits as a nonsubsidized employee who performs similar work. Prior to receiving any subsidy or incentive, an employer shall enter into a written contract with the department which may include, but not be limited to, provisions addressing any of the following:

- (i) Payment schedules for any subsidy or incentive such as deferred payments based on retention of the recipient in employment;
- (ii) Durational requirements for the employer to retain the recipient in employment;
- (iii) Training to be provided to the recipient by the employer;
- (iv) Contributions, if any, made to the recipient's individual development account; and

(v) Weighting of incentive payments proportionally to the extent to which the recipient has limitations associated with the long-term receipt of welfare and difficulty in sustaining employment. In establishing incentive payments, the department shall consider the extent of the recipient's prior receipt of welfare, lack of employment experience, lack of education, lack of job skills, and other appropriate factors.

(B) The department may require an employer to repay some or all of a subsidy and incentive previously paid to an employer under the program unless the recipient is terminated for cause;

(4) "Work experience" is job-training experience at a supervised public or private not-for-profit agency or organization or with a private for-profit employer which is linked to education or training and substantially enhances a recipient's employability. Work experience may include work study, training-related practicums, and internships;

(5)(A) "Job search assistance" may include supervised or unsupervised job-seeking activities. Job readiness assistance provides support for job-seeking activities, which may include:

(i) Orientation in the world of work and basic job-seeking and job-retention skills;

(ii) Instruction in completing an application for employment and writing a resume;

(iii) Instruction in conducting oneself during a job interview, including appropriate dress; and

(iv) Providing a recipient with access to an employment resource center that contains job listings, telephones, facsimile machines, typewriters, and word processors.

(B) Job search and job readiness activities may be used in conjunction with other program activities such as community service work experience but may not be the primary work activity and may not continue longer than the length of time permitted under federal law;

(6) "Education" includes elementary and secondary education, education to obtain the equivalent of a high school diploma, and education to learn English as a second language. In consultation with adult education or rehabilitative services, a person with a high school diploma or the equivalent who tests at less than a working functioning level shall be eligible to participate in basic remedial or adult education. If an individual does not have a high school diploma or equivalency, "education" also includes basic remedial education and adult education;

(7) "Vocational educational training" is postsecondary education, including, at least, programs at two-year or four-year colleges, universities, technical institutes, and vocational schools or training in a field directly related to a specific occupation;

(8) Job skills training directly related to employment provides job skills training in a specific occupation. Job skills training may include customized training designed to meet the needs of a specific employer or a specific industry;

(9) "On-the-job training" means training and work experience at a public or private not-for-profit agency or organization or with a private for-profit employer which provides an opportunity to obtain training and job supervision and provides employment upon satisfactory completion of training;

(10) School attendance at a high school or attendance at a program designed to prepare the recipient to receive a high school equivalency diploma is a required program activity for each recipient eighteen (18) years of age or younger who:

(A) Has not completed high school or obtained a high school equivalency diploma;

(B) Is a dependent child or a head of household; and

(C) For whom it has not been determined that another program activity is more appropriate;

(11) Participation in medical, educational, counseling, and other services that are part of the recipient's personal responsibility agreement is a required activity for each teen parent who participates in the Transitional Employment Assistance Program; and

(12) "Community service" is time spent engaged in an approved activity at a government entity or community-based, charitable organization.

(b) All occupational training must meet at least one (1) of the following requirements:

(1) Be on the statewide or appropriate area list of occupations in the "Guide to Educational Training Program for Demand Occupations" published by the Arkansas Employment Security Department;

(2) Be on that list for another area within the state to which the program recipient has signed a commitment to relocate;

(3) Be for a specific position for which an employer has submitted a letter demonstrating intent to hire persons upon successful completion of training; and

(4) Be in an occupation in local demand but not shown on the state or area demand list if the local demand is documented or will be documented by the area workforce investment board through a state-prescribed methodology.

(c)(1) Each state agency and each entity that contracts to provide services for a state agency shall establish recruitment and hiring goals which shall target ten percent (10%) of all jobs requiring a high school diploma or less to be filled with transitional employment assistance or food stamp recipients.

(2) A question concerning receipt of transitional employment assistance benefits or food stamps may be added to the state employment application for purposes of targeting these applicants.

(3) Each agency shall report to the Arkansas Transitional Employment Board and the independent evaluator the number of program recipients employed by the state agency and the contract service provider in comparison to the established goal.

(d)(1) The department shall require participation in approved work activities to the maximum extent possible, subject to federal and state funding. If funds are projected to be insufficient to support full-time work activities by all program recipients who are required to participate in work activities, the department shall screen recipients and assign priority in accordance with the implementation plan.

(2) In accordance with the implementation plan, the department may limit a recipient's weekly work requirement to the minimum required to meet federal work activity requirements and may develop screening and prioritization procedures within employment opportunity districts or within counties based on the allocation of resources, the availability of community resources, or the work activity needs of the employment opportunity district or county.

(e)(1) Subject to subdivision (e)(2) of this section, an adult in a family receiving assistance under the program may fill a vacant employment position in order to engage in a work activity described in subsection (a) of this section.

(2) No adult in a work activity described in subsection (a) of this section which is funded, in whole or in part, by funds provided by the federal government shall be employed or assigned:

(A) When any other individual is on layoff from the same or any substantially equivalent job; or

(B) If the employer has terminated the employment of any regular employee or otherwise caused an involuntary reduction in its workforce in order to fill the vacancy so created with an adult described in subdivision (e)(1) of this section.

(3) The Arkansas Employment Security Department shall establish and maintain a grievance procedure for resolving complaints of alleged violations of subdivision (e)(2) of this section.

(4) Nothing in this subsection (e) shall preempt or supersede any provision of state or local law that provides greater protection for employees from displacement.

(f) The department, subject to review, recommendation, and approval by the board, shall establish criteria to exempt or temporarily defer the following persons from any work activity requirement:

(1) An individual required to care for a recipient child until the child reaches the maximum age specified by regulation, not to exceed twelve (12) months of age;

(2) A disabled parent or caregiver, based upon criteria set forth in regulations;

(3) A woman in the third trimester of pregnancy;

(4) A parent or caregiver who is caring for a disabled child relative or disabled adult relative, based upon criteria set forth in regulations;

(5) A minor parent less than eighteen (18) years old who resides in the home of a parent or in an approved adult-supervised setting and who participates in full-time education or training;

(6) A teen parent head of household under the age of twenty (20) who maintains satisfactory attendance as a full-time student at a secondary school;

(7) An individual for whom support services necessary to engage in a work activity are not available;

(8) An individual who, as determined by a department case manager, is unable to participate in work activities due directly to the effects of domestic violence. All case manager determinations made under this subsection (f) shall be reviewed by a supervisor within five (5) days of such determination;

(9) An individual unable to participate in a work activity due to extraordinary circumstances;

(10) A parent or caregiver over sixty (60) years of age; and

(11) Child-only cases.

History. Acts 1979, No. 667, §§ 1-3; A.S.A. 1947, §§ 83-123.3 — 83-123.5; Acts 1997, No. 1058, § 9; 1999, No. 1567, § 12.

Amendments. The 1997 amendment rewrote the section.

The 1999 amendment inserted present (a)(7) and (a)(9) and redesignated the remaining subdivisions accordingly; inserted present (a)(2)(A)(iv) and (a)(3)(A)(iv) and redesignated former (a)(2)(A)(iv) and (a)(3)(A)(iv) as present (a)(2)(A)(v) and (a)(3)(A)(v); redesignated former (c) as present (c)(1)-(3); in the introductory paragraph of (a), inserted the present second sentence and “vocational educational training,” substituted “enterprise, community service and work expe-

rience” for “enterprise, and community service work experience” and added “For purposes of this section:” at the end; in (a)(4), substituted “Work experience” for “Community service work experience,” inserted “or organization or with a private, for-profit employer” and added the present last sentence; rewrote (a)(6) and present (a)(8); added (a)(12); rewrote (b); substituted “Arkansas Transitional Employment Board” for “Advisory Council” in (c)(3); inserted “subject to review, recommendation, and approval by the board” in (f); rewrote (f)(2) and (f)(4); deleted “immediate” preceding “effects” in (f)(8); added (f)(10) and (f)(11); and made stylistic changes.

20-76-403. Application — Fraud.

(a) The application for assistance shall contain a statement of the amount of both real and personal property in which the applicant has an interest and of all earned and unearned income which he or she may have at the time of the filing of the application and such other information as may be required by the Department of Human Services.

(b) Any assistance improperly paid shall be recoverable by the state as a debt due the state and, if applicable, the recipient shall be prosecuted under theft of public benefits, § 5-36-202.

(c)(1) All assistance provided under this chapter shall be reconsidered by the department as frequently as the department deems necessary. The amount of assistance may be entirely withdrawn by the department if the department is advised that the recipient’s circumstances have altered sufficiently to warrant such action.

(2) Whoever shall withhold information in a periodic reconsideration that may result in a recipient’s assistance being changed or withdrawn shall be guilty of fraud. Any money paid after information has been withheld shall be recoverable as a debt due the state.

(d) The department shall forthwith close any recipient’s open case upon a judicial or administrative determination that the individual recipient has committed fraud in order to receive transitional employment assistance benefits. The case shall remain closed and the recipient shall remain ineligible until all indebtedness to the department is repaid with interest.

History. Acts 1939, No. 280, § 23; 1953, No. 177, § 5; A.S.A. 1947, § 83-129; Acts 1997, No. 1058, § 10.

Amendments. The 1997 amendment rewrote the section.

20-76-404. Duration of assistance — Extended support services.

(a)(1) Beginning July 1, 1998, the Department of Human Services shall not provide financial assistance to a family that includes an adult

recipient who has received financial assistance for more than twenty-four (24) months, except as provided in subsection (c) of this section.

(2) The number of months need not be consecutive and shall include the time a recipient receives financial assistance from another state.

(3) The department may by regulation establish other limitations on the receipt of financial assistance not inconsistent with state or federal law.

(b)(1) The department shall certify to the Governor and the House and Senate Committees on Public Health, Welfare, and Labor when the support services necessary for program recipients to obtain employment or participate in allowable work activities are available.

(2) The department may certify subsets of program recipients, including, but not limited to, recipients in a certain geographical area or employment opportunity district or program recipients with a high school diploma or general educational development certificate.

(3) Prior to implementing the twenty-four-month cumulative limit on financial assistance, the department shall notify program recipients by direct mail or contact and by other means reasonably calculated to reach to current and potential program recipients, including, but not limited to, the posting of notices in county offices.

(c) The department shall within thirty (30) calendar days exempt or temporarily defer the following persons from the twenty-four-month cumulative limit on financial assistance:

(1) An individual, as determined by a department case manager, who cooperated and participated in activities, but was unable to obtain employment because of circumstances or barriers beyond his or her control;

(2) Child-only cases;

(3) An individual unable to obtain employment because of the lack of support services necessary to overcome barriers to employment;

(4) A parent or caregiver over sixty (60) years of age;

(5) A parent or caregiver who is caring for a disabled child relative or disabled adult relative, based upon criteria set forth in the department's regulations;

(6) A disabled parent or caregiver, based upon criteria set forth in the department's regulations;

(7) A parent less than eighteen (18) years old who resides in the home of a parent or in an approved adult-supervised setting and who participates in full-time education or training;

(8) An individual, who as determined by a department case manager, is unable to obtain employment due directly to the effects of domestic violence. All case manager determinations made under this subsection (c) shall be reviewed by a supervisor within five (5) days of the determination;

(9) Other individuals as determined by the department, including, but not limited to, a child when necessary to protect the child from the risk of neglect, as defined by § 12-12-503(6);

(10) Individuals participating in education and training activities who have reached the end of their twenty-four-month cumulative limit

on financial assistance, have complied with all transitional employment assistance regulations, are making satisfactory academic progress as determined by the academic institution or training program in which the individual is currently enrolled, and are expected to complete the requirements for the education or training program within a reasonable period of time as defined in regulations issued by the department.

(d)(1) No months shall be counted toward a person's twenty-four-month cumulative limit on financial assistance while he or she is receiving a deferral or exemption.

(2) There shall be no limit on the length or the number of deferrals or exemptions granted each person as long as the person meets any of the criteria outlined in § 20-76-404(c)(1)-(10).

(3) The department shall periodically review each case to determine whether the person still meets any of the criteria outlined in § 20-76-404(c)(1)-(10).

(4)(A) The department shall carry out an enhanced review of all cases six (6) months before the expiration of the time limit.

(B) The review shall assess the barriers that remain to the adult or adults in the case obtaining employment, what enhanced services can be provided to enable him or her to obtain employment, and whether the case should be given a six-month extension or be exempted from the time limit.

(C) The department shall make every reasonable effort to deliver the available services identified in subdivision (d)(4)(B) of this section.

(D) The department shall grant an extension at the time for review if the client meets one (1) of the grounds for extension.

(E) The department shall carry out a further review at the end of the extension period.

(e)(1) A recipient who was eligible for Medicaid and loses his or her financial assistance due to earnings and whose income remains below one hundred eighty-five percent (185%) of the federal poverty level shall remain eligible for transitional Medicaid without reapplication during the immediately succeeding twelve-month period if private medical insurance is unavailable from the employer.

(2) A recipient who loses his or her financial assistance due to earnings and who is employed shall be eligible for:

(A) Child care assistance at no cost and without reapplication for a cumulative period of twelve (12) months; and

(B) Twenty-four (24) additional months of child care assistance provided on a sliding fee scale or other cost-sharing arrangement as determined by the Arkansas Transitional Employment Board.

(3) The board may reduce the period of transitional child care to a total of twenty-four (24) months for recipients who lose assistance at a specified date after the board's decision to limit the assistance if the board certifies to the Governor and the Chief Fiscal Officer of the State that the reduction is necessary to avoid overspending the biennial budget for child care.

(4) The transitional child care assistance available to former recipients shall not exceed the cumulative number of months provided under subdivisions (e)(2) and (3) of this section, regardless of whether the former recipient reenters the Transitional Employment Assistance Program.

(f)(1) The department shall deny Medicaid, child care, and transportation assistance during the twelve-month period for any month in which the recipient's family does not include a dependent child.

(2) The department shall notify the recipient of transitional Medicaid, child care, and transportation assistance when the recipient is notified of the termination of cash assistance. The notice shall include a description of the circumstances in which the transitional Medicaid and child care assistance may be terminated.

(g)(1) In order to assist current and former program recipients in continuing training and upgrading skills, transitional education or training may be provided to a recipient for up to one (1) year after the recipient is no longer eligible to participate in the program due to employment earnings.

(2) Education or training resources available in the community at no additional cost to the department shall be used whenever possible.

(3) Transitional education or training shall be employment-related and may include education or training to improve a recipient's job skills in the recipient's existing area of employment or may include education or training to prepare a recipient for employment in another occupation.

(4) The department may enter into an agreement with an employer to share the costs relating to upgrading the skills of recipients hired by the employer.

(h) Other extended support services may be available to recipients no longer eligible for financial assistance under transitional employment assistance.

(i)(1) By August 1, 2001, the department shall develop a plan, subject to review and approval by the board, to monitor and protect the safety and well-being of the children within a family whose temporary assistance is terminated for any reason other than the family's successful transition to economic self-sufficiency.

(2)(A) Actions required by the plan shall include at least one (1) home visit with the parents and children.

(B) Every reasonable effort shall be made to make contact with all families, including visits during evenings and on weekends.

(C) The first home visit shall occur within six (6) months after the termination of cash assistance.

(D) The purposes of the home visits shall include checking on the well-being of children in those families and determining whether the families need available services.

(3) The department may contract with other state agencies, private companies, local government agencies, or community organizations for the conducting of these visits.

(4) The board shall submit a report to the Governor and the chairs of the House Interim Committee on Public Health, Welfare, and Labor and the Senate Interim Committee on Public Health, Welfare, and Labor that report on the outcomes of the home visits and provide separate information for families who left transitional assistance due to noncompliance and time limits.

(j) As part of the home visits, families shall be informed about the availability of Medicaid and ARKids First, food stamps, child care, housing assistance, any other supportive services offered by the department or the Department of Health designed to help meet the basic needs and well-being of children, federal and state earned income tax credits, individual development accounts, employment counseling services, and education and training opportunities designed to increase the future earnings and employment prospects of clients.

History. Acts 1953, No. 231, § 7; A.S.A. 1947, § 83-129.1; Acts 1997, No. 1058, § 11; 1999, No. 1567, § 13; 2001, No. 1264, §§ 7, 8.

Publisher's Notes. As to approval and payment of physicians eligible to examine persons applying for assistance, see Acts 1953, No. 564.

Amendments. The 1997 amendment rewrote the section.

The 1999 amendment redesignated former (a) as present (a)(1)-(3), former (b) as present (b)(1)-(3); inserted present (d), redesignated former (d) as present (e) and (f), and redesignated the remaining subsections accordingly; in (c), substituted "within thirty (30) calendar days exempt" for "establish criteria to exempt"; deleted "extraordinary" preceding "circumstances" in (c)(1); added (c)(10); inserted "and transportation" in present (f)(1) and (f)(2); rewrote present (i); added (j); and made stylistic changes.

The 2001 amendment deleted "and child care assistance" following "transi-

tional Medicaid" in (e)(1); redesignated former (e)(2) as present (e)(2)(B) and substituted "Arkansas Transitional Employment Board" for "department"; added the introductory language of (e)(2) and (e)(2)(A); and added (e)(3)-(4); and substituted the present (i) for the former, which read: "By January 1 of each year, the department and the Department of Health shall present a plan to the board to monitor and protect the safety and well-being of the children within a family whose temporary assistance is terminated for any reason other than the family's successful transition to economic self-sufficiency. Such actions shall include, but not necessarily be limited to, at least three (3) home visits with such children, the first of which shall occur within thirty (30) days of the termination of cash assistance, the second visit three (3) months after termination of cash assistance, and the third visit six (6) months after termination of cash assistance."

20-76-405. Diversion from assistance.

(a) When an applicant applies for employment assistance, the Department of Human Services shall determine whether the applicant is eligible to be diverted from receiving employment assistance. That determination shall be based on an assessment conducted in conformity with regulations promulgated by the department.

(b) The department shall determine eligibility for diversion from assistance by considering whether but for the diversion from assistance the applicant would receive employment assistance. If the department determines that the applicant is eligible for diversion from assistance and the recipient agrees to the diversion, the department may provide

a single loan payment of up to the amount of financial assistance that the applicant could receive during three months if not diverted.

(c) An applicant may receive diversion loan assistance only once. Receipt of diversion loan assistance shall be accompanied by a written declaration by the recipient electing to forego transitional employment assistance financial assistance for one hundred (100) days as a condition of receiving the diversion loan assistance.

(d) A diversion from assistance is in lieu of other services described in this chapter.

History. Acts 1939, No. 280, § 24; A.S.A. 1947, § 83-130; Acts 1997, No. 1058, § 12.

Amendments. The 1997 amendment rewrote the section.

20-76-406. Alternative benefits.

(a) The Department of Human Services may establish and maintain a program of public assistance as an alternative for individuals otherwise eligible for transitional employment assistance who, having engaged in transitional employment assistance work activities for at least six (6) weeks, have fully complied with all provisions in the individual's personal responsibility agreement but who are not engaged in work as defined in transitional employment assistance laws or regulations.

(b) No individual shall be eligible for alternative benefits unless the person meets the minimum eligibility requirements for transitional employment assistance. The amount, scope, and duration of alternative benefits shall not exceed benefits available through transitional employment assistance.

History. Acts 1939, No. 280, § 26; 1949, No. 192, §§ 1, 2; 1965 (2nd Ex. Sess.), No. 14, § 5; A.S.A. 1947, §§ 83-132 — 83-132.2; Acts 1997, No. 1058, § 13.

Amendments. The 1997 amendment rewrote the section.

20-76-407. Micro-lending program and individual development accounts.

(a)(1) In accordance with their personal responsibility agreement, low-income entrepreneurs may escrow profits from their business enterprises which are not reinvested into their businesses into an account which will be placed in a micro-lending program and not be counted against their public assistance benefits until they accumulate an amount to be determined by the Department of Human Services for the period that they are eligible for the Transitional Employment Assistance Program. Under this section, participating low-income entrepreneurs who are otherwise eligible for transitional employment assistance shall not have their benefits reduced and shall not lose any transitional or extended support services available to them as program recipients for the life of the escrow account.

(2) The department will make available a micro-lending program to low-income entrepreneurs. For the purpose of this section, a “low-income entrepreneur” is one who is starting or expanding a business and who meets the eligibility criteria established by the department for the micro-lending program. A “micro-lending program” is one which provides training, technical assistance, and loan funds to low-income entrepreneurs to start or expand a business venture.

(3) Under this section, self-employment shall be considered an allowable work activity. To receive the self-employment exemption outlined in this section, low-income entrepreneurs shall be enrolled in the program and shall be enrolled in a micro-lending program providing entrepreneurship training, technical assistance, and peer support.

(b) The department shall establish an individual development account demonstration project.

(c) Federal funds received by the state pursuant to the Temporary Assistance for Needy Families program shall be available for programs under this section.

History. Acts 1939, No. 280, § 19; A.S.A. 1947, § 83-124; Acts 1997, No. 1058, § 14; 1999, No. 1567, § 14.

The 1999 amendment rewrote (a); deleted (b)(2)-(4); and made stylistic changes.

Amendments. The 1997 amendment rewrote the section.

CASE NOTES

Award of Back Payments.

Where the State refused to represent plaintiff in establishing her claims for support payments in arrears and acknowledged that it was not entitled to collect the back payments, the State was

estopped from claiming in subsequent proceedings that it was entitled to collect the back payments. *State, Office of Child Support Enforcement v. Wallace*, 328 Ark. 183, 941 S.W.2d 430 (1997).

20-76-408. Appeal to Department of Human Services.

If an application for assistance is denied in whole or in part, the applicant or recipient may appeal to the Department of Human Services in the manner and form prescribed by the department. The department shall, upon receipt of the appeal, give the applicant or recipient a reasonable notice of opportunity for a fair hearing pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 1939, No. 280, § 29; A.S.A. 1947, § 83-135; Acts 1997, No. 1058, § 15.

Amendments. The 1997 amendment rewrote the section.

RESEARCH REFERENCES

UALR L.J. Stafford, Separation of Powers and Arkansas Administrative

Agencies: Distinguishing Judicial Power and Legislative Power, 7 UALR L.J. 279.

CASE NOTES

Cited: Hardin v. City of DeValls Bluff, 256 Ark. 480, 508 S.W.2d 559 (1974).

20-76-409. Disqualification and sanction.

(a) Each individual applying for assistance under this chapter shall state in writing during the application process whether the individual or any member of the household of the individual has been found guilty of or pleaded guilty or nolo contendere to a crime described in subsection (b) of this section.

(b) No individual who has been found guilty of or has pleaded guilty or nolo contendere to any state or federal offense classified as a felony by the law of the jurisdiction involved and which has as an element of the offense the distribution or manufacture of a controlled substance, as defined in section 102(6) of the Controlled Substances Act, 21 U.S.C. § 802(6), shall be eligible for:

(1) Assistance under any state program funded wholly or partially under part A of title IV of the Social Security Act;

(2) Assistance under any state program created by this chapter; or

(3) Benefits under the food stamp program.

(c)(1) The amount of the assistance otherwise required to be provided under transitional employment assistance to the family members of an individual made ineligible by this section shall be reduced by the amount which would have otherwise been made available to the individual.

(2) The amount of benefits otherwise required to be provided to a household under the food stamp program shall be determined by considering the individual made ineligible by this section not to be a member of such household, except that the income and resources of the individual shall be considered to be income and resources of the household.

(d) Clear notice of this section shall be provided in the personal responsibility agreement.

(e) This section shall not apply to findings of guilt or pleas of guilty or nolo contendere for offenses occurring on or before July 1, 1997.

(f) In accordance with this section, the State of Arkansas opts out of Section 115 of the Personal Responsibility and Work Opportunity Act of 1996.

History. Acts 1939, No. 280, § 25; 1951, No. 309, § 1; A.S.A. 1947, § 83-131; Acts 1997, No. 1058, § 16.

Amendments. The 1997 amendment rewrote the section.

U.S. Code. Title IV-A of the Social Se-

curity Act, referred to in this section, is codified as 42 U.S.C. § 601 et seq.

Section 115 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 is codified as 21 U.S.C. § 862a.

20-76-410. Administrative sanctions — Transitional employment assistance.

(a) A reduction in financial assistance or case closure shall be imposed in the following situations:

(1) The individual fails without good cause to cooperate with the Office of Child Support Enforcement;

(2) The individual refuses to accept employment without good cause;

(3) The individual quits employment without good cause;

(4) The individual fails without good cause to comply with the provisions of the employment plan;

(5) The individual fails without good cause to comply with the provisions of the personal responsibility agreement; or

(6) The individual flees prosecution or custody or confinement following conviction or is in violation of the terms or conditions of parole or probation.

(b) The Department of Human Services may by regulation define additional situations that require sanction, establish additional sanctions, and provide for administrative disqualification.

(c)(1) If a parent is sanctioned for noncompliance with the Transitional Employment Assistance Program requirements, financial assistance for the child or children may be continued.

(A)(i) After making reasonable efforts to determine that the transitional employment assistance recipient understands the requirements and does not face unknown barriers to compliance, the department may withhold the family's financial assistance for one (1) month.

(ii) If the parent comes into compliance within thirty (30) days and maintains compliance for two (2) weeks, the full financial assistance shall be paid to the parent.

(iii) During the thirty (30) days, the department shall arrange a home visit to the family to determine the well-being of the child or children, to determine whether additional services are required to protect the well-being of the child or children, and to ensure that the parent understands the requirements and the consequences of non-compliance.

(B) If the parent fails to come into compliance in thirty (30) days, the family's financial assistance may be reduced:

(i) By up to twenty-five percent (25%) for the second and third months of noncompliance;

(ii) By up to fifty percent (50%) in the fourth through sixth months of noncompliance; and

(iii) By up to one hundred percent (100%) after the sixth month of noncompliance.

(C) The department shall arrange a home visit with the family after the sixth month of noncompliance to determine the well-being of the child or children and to determine whether additional services are required to protect the well-being of the child or children.

(D) Medicaid and food stamp benefits shall be continued without need for reapplication if the family is being sanctioned and for as long as the family remains eligible under the requirements of those programs.

(E) Department staff may conduct home visits to sanctioned families or they may contract with other state agencies, local coalitions, or appropriate community organizations to perform this function.

(F) Beginning January 1, 2001, the department shall submit biannual reports on the families sanctioned and the outcomes of the home visits to the Governor and the House Interim Committee on Public Health, Welfare, and Labor and the Senate Interim Committee on Public Health, Welfare, and Labor.

(2) When appropriate, protective payees may be designated by the department and may include:

(A) A relative or other individual who is interested in or concerned with the welfare of the child or children and agrees in writing to utilize the assistance in the best interests of the child or children;

(B) A member of the community affiliated with a religious, community, neighborhood, or charitable organization who agrees in writing to utilize the assistance in the best interests of the child or children; or

(C) A volunteer or member of an organization who agrees in writing to utilize the assistance in the best interests of the child or children.

(3) If it is in the best interest of the child or children, as determined by the department, for the staff member of a private agency, a public agency, the department, or any other appropriate organization to serve as a protective payee, such designation may be made, except that a protective payee must not be any individual involved in determining eligibility for assistance for the family, staff handling any fiscal pressures related to the issuance of assistance, or landlords, grocers, or vendors of goods, services, or items dealing directly with the recipient.

History. Acts 1939, No. 280, § 21; 1953, No. 177, § 3; 1957, No. 314, § 1; 1965 (1st Ex. Sess.), No. 34, § 2; 1965 (2nd Ex. Sess.), No. 14, § 3; 1967, No. 374, § 3; 1983, No. 780, §§ 1, 2; A.S.A. 1947, §§ 83-127 — 83-127.2; Acts 1997, No. 1058, § 17; 1999, No. 1567, § 15; 2001, No. 1264, § 9.

Amendments. The 1997 amendment rewrote the section.

The 1999 amendment substituted “eighteen (18) shall be continued” for “sixteen (16) may be continued” in (c)(1), and made stylistic changes.

The 2001 amendment rewrote (c)(1).

Cross References. Assigned support rights, §§ 9-14-211 — 9-14-214.

Child Support Enforcement Unit — Employment of attorneys, § 9-14-210.

RESEARCH REFERENCES

Ark. L. Rev. Recent Developments, 45
Ark. L. Rev. 257.

CASE NOTES

Award of Back Payments.

Where the State refused to represent plaintiff in establishing her claims for support payments in arrears and acknowledged that it was not entitled to collect the back payments, the State was estopped from claiming in subsequent proceedings that it was entitled to collect the back payments. State, Office of Child

Support Enforcement v. Wallace, 328 Ark. 183, 941 S.W.2d 430 (1997).

Cited: Benac v. State, 34 Ark. App. 238, 808 S.W.2d 797 (1991); State Office of Child Support Enforcement v. Harnage, 322 Ark. 461, 910 S.W.2d 207 (1995); Guinn v. Guinn, 35 Ark. App. 199, 816 S.W.2d 629 (1991).

20-76-411. [Repealed.]

Publisher's Notes. This section, concerning reporting requirements for recipients of transitional employment assistance benefits, failure to appear for

pediatrics screening, and immunization, was repealed by Acts 1999, No. 1567, § 16. The section was derived from Acts 1975, No. 918, § 22; 1997, No. 1058, § 18.

20-76-412. Abandonment — Duties of Department of Human Services.

Whenever any person makes an application for transitional employment assistance benefits from the Department of Human Services and the application reveals that the applicant or child or children was or were put in such needy circumstances as to require public assistance by reason of the fact that the spouse or child or the illegitimate child was deserted or abandoned or left in destitute or necessitant circumstances by willful neglect or refusal to provide for the support or maintenance of the spouse or child by the child's parents, then it shall be the duty of the department to refer that applicant or child or children to the Office of Child Support Enforcement, to attempt to establish the paternity of the child or children, if necessary, and secure support therefor from any person who might owe the child or children a duty of support.

History. Acts 1953, No. 231, § 1; 1983, No. 591, § 1; A.S.A. 1947, § 83-150; Acts 1995, No. 1184, § 34; 1997, No. 1058, § 19.

Amendments. The 1997 amendment

substituted "TEA Benefits" for "Aid to Families with Dependent Children assistance" and substituted "department" for "appropriate division of the Department of Human Services."

20-76-413 — 20-76-417. [Repealed.]

Publisher's Notes. These sections, concerning criminal proceedings for parental abandonment, the recovery of payments by the state, and location of parents through state records, were repealed by Acts 1997, No. 1058, § 31. They were derived from the following sources:

20-76-413. Acts 1953, No. 231, § 2; A.S.A. 1947, § 83-151.

20-76-414. Acts 1953, No. 231, §§ 3, 4; A.S.A. 1947, §§ 83-152, 83-153.

20-76-415. Acts 1953, No. 231, § 5; A.S.A. 1947, § 83-154.

20-76-416. Acts 1953, No. 231, § 6; A.S.A. 1947, § 83-155.

20-76-417. Acts 1963, No. 28, § 1; A.S.A. 1947, § 83-161.

20-76-418. Foster care — Reduction in long-term care.

(a) It shall be the goal of the State of Arkansas to reduce the number of children who will remain in the Foster Care Program of title IV-E of the Social Security Act under the appropriate division of the Department of Human Services.

(b) The maximum number of children that can remain in care over twenty-four (24) months cannot exceed fifty-five percent (55%) of all children in the title IV-E foster care system.

(c) Each fiscal year, it shall be the goal of the State of Arkansas to reduce the maximum number of children in the state who will remain in the title IV-E foster care system after having been in the care over twenty-four (24) months by three percent (3%) each year.

(d) The appropriate division of the department is directed to develop appropriate plans which describe how the above goals will be achieved.

History. Acts 1981, No. 246, §§ 1-3; curity Act referred to in this section is
A.S.A. 1947, §§ 83-175 — 83-175.2. codified in 42 U.S.C. § 670 et seq.

U.S. Code. Title IV-E of the Social Se-

20-76-419. Blind persons generally.

(a) Assistance grants shall be given under this act to any person who:

(1) Has no vision or whose vision with correcting glasses is so defective as to prevent the performance of ordinary activities for which eyesight is essential;

(2) Is sixteen (16) years of age or over; and

(3) Is not receiving any other type of assistance grant.

(b) The appropriate division of the Department of Human Services shall:

(1) Promulgate rules and regulations, in terms of ophthalmic measurements, to determine the amount of visual acuity which an applicant may have and still be eligible for assistance grants under this act;

(2) Designate a suitable number of ophthalmologists and optometrists, licensed to practice in Arkansas and actively engaged in the practice of their respective professions, to examine applicants and recipients of assistance grants to the blind;

(3) Fix and pay to ophthalmologists and optometrists fees for examination of applicants; and

(4) Develop or cooperate with other agencies in developing measures for the prevention of blindness, the restoration of eyesight, and the vocational adjustment of blind persons.

(c)(1) No applications shall be approved until the applicant has been examined by an ophthalmologist or optometrist, whichever the individual may select, designated or approved by the division to make the examination.

(2) The examining ophthalmologist or optometrist shall certify in writing upon forms provided by the division the findings of the examination.

(3) The recipient shall submit to a reexamination as to his or her eyesight when required to do so by the division.

(d) The amount of the assistance grants shall be determined in accordance with the provisions of § 20-76-407, except that in determining need, the division shall disregard the first eighty-five dollars (\$85.00) per month of earned income, and where earned income has been disregarded in determining the need of a person receiving aid to the blind, the earned income so disregarded shall be disregarded in determining the need of any other individual for old age assistance, aid to the families of dependent children, aid to the blind, and aid to the permanently and totally disabled. The assistance grants shall be in the form of money payments to blind persons in need.

(e) On the basis of the findings of the ophthalmologist's examination as provided for in this act, supplementary services may be provided by the division to any applicant or recipient who is in need of treatment either to prevent blindness or to restore his or her eyesight whether or not he or she is blind as defined in this act or rules and regulations of the division, if he or she is otherwise qualified for assistance grants under this act. The supplementary services may include necessary traveling and other expenses to receive treatment from a hospital or clinic designated by the division.

History. Acts 1939, No. 280, § 22; 34, § 3; 1965 (2nd Ex. Sess.), No. 14, § 4; 1951, No. 308, § 1; 1953, No. 177, § 4; 1967, No. 374, § 4; A.S.A. 1947, § 83-128. 1961, No. 58, § 1; 1961, No. 257, § 1; **Meaning of "this act".** See note to 1963, No. 8, § 1; 1965 (1st Ex. Sess.), No. § 20-76-401.

20-76-420. Blind persons — Choice of eye care.

(a) No state official, employee of the Department of Human Services, or official or employee of any county office engaged directly or indirectly in the administration of this act shall preclude, or assist in precluding, any individual from obtaining services for which payment may be made under this act from any ophthalmologist or optometrist licensed to render such services in this state and actively engaged in the practice of their respective professions and shall not, under any circumstances, in informing a person requiring vision care, or for a correction of any vision or muscular anomaly, either directly or indirectly, refer that person to any particular ophthalmologist or optometrist but shall merely advise the person of the need for professional services.

(b) Nothing in this act shall be construed as precluding any individual from obtaining services for which payment may be made under this act from any ophthalmologist or optometrist duly licensed to render the services in this state and actively engaged in the practice of their respective professions.

History. Acts 1965 (2nd Ex. Sess.), No. 14, §§ 8, 9; A.S.A. 1947, §§ 83-128.4, 83-128.5.

Meaning of "this act". Acts 1965 (2nd Ex. Sess.), No. 14, codified as §§ 20-76-406, 20-76-410, 20-76-419, 20-76-420, 20-76-424 [Repealed], 20-76-427 [Repealed], 20-77-102.

Cross References. Freedom of choice, indigent eye care, § 20-77-506.

20-76-421. Aged and blind persons generally.

(a) The appropriate division of the Department of Human Services is authorized to provide assistance grants to needy aged persons, as authorized in § 20-76-424 [repealed], and assistance grants to needy blind persons, as authorized in § 20-76-419, of up to one hundred twenty-five dollars (\$125) per month in keeping with the federal Social Security Act, and as state funds therefor are available.

(b) It is the intent of this section to be cumulative to the public welfare laws of this state.

History. Acts 1967, No. 19, §§ 1, 2; A.S.A. 1947, §§ 83-128.3, 83-128.3n. referred to in this section is codified primarily in Title 42 of U.S.C.
U.S. Code. The Social Security Act re-

20-76-422. Aged, blind, and disabled — Conversion from state to federal program.

(a) The Director of the Department of Human Services is authorized to enter into agreements with the Secretary of Health and Human Services and other state agencies to effectuate an orderly and timely conversion from state to federal programs of cash assistance for the aged, blind, and disabled, as provided in Pub. L. 92-603, title III, in such a manner as would be expedient to both the federal government and the State of Arkansas.

(b) The agreements may include the transfer of state funds to, and the receipt of federal funds from, the secretary for the purposes of supplementing the federal benefits to be paid to eligible persons, to facilitate disability, blindness, and Medicaid eligibility determinations on behalf of the state by the secretary, and to enable the state to perform required administrative or program functions on behalf of the secretary under which the secretary will advance federal funds for the payment of full-time and part-time employees and their related supportive expenses as deemed necessary by both the director and the secretary to carry out the conversion plan.

History. Acts 1985, No. 649, § 30; 603, referred to in this section, codified as A.S.A. 1947, § 83-128.6. 42 U.S.C. §§ 1381, 1381a, 1381n, 1382 to 1382e, 1383 to 1383c.
U.S. Code. Title III of Public Law 92-

20-76-423. Aged, blind, and disabled — Supplemental Security Income.

It was the intent of the Sixty-Ninth General Assembly that on January 1, 1974, and thereafter, the State of Arkansas should provide supplemental payments to its citizens participating in the new supplemental security income program in the amount of mandatory minimum supplements as outlined in Pub. L. 92-603 and further explained in the

written agreement between the Department of Human Services and the Secretary of the Department of Health and Human Services.

History. Acts 1985, No. 649, § 29; A.S.A. 1947, § 83-128.7. referred to in this section, is codified primarily as 42 U.S.C. §§ 401 et seq., 1381 et seq., 1395 et seq., and 1396 et seq.

U.S. Code. Public Law 92-603, re-

20-76-424 — 20-76-428. [Repealed.]

Publisher's Notes. These sections, concerning grants to aged persons, including payments for long-term care facilities, medical services, drugs, and permanently and totally disabled persons, and for periodic reconsideration, were repealed by Acts 1997, No. 1058, § 31. They were derived from the following sources:

20-76-424. Acts 1939, No. 280, § 20; 1957, No. 117, § 1; 1961, No. 60, § 1; 1963, No. 7, § 1; 1965, No. 66, § 1; 1965 (1st Ex. Sess.), No. 34, § 1; 1965 (2nd Ex.

Sess.), No. 14, § 1; 1967, No. 374, § 1; A.S.A. 1947, § 83-126.

20-76-425. Acts 1971, No. 448, § 1; A.S.A. 1947, § 83-166.

20-76-426. Acts 1974 (Ex. Sess.), No. 56, §§ 1-3; A.S.A. 1947, §§ 83-163 — 83-165.

20-76-427. Acts 1951, No. 309, § 2; 1961, No. 186, § 1; 1965 (2nd Ex. Sess.), No. 14, § 2; 1967, No. 374, § 2; A.S.A. 1947, § 83-126.1.

20-76-428. Acts 1939, No. 280, § 28; 1953, No. 177, § 6; A.S.A. 1947, § 83-134.

20-76-429. Receipt of additional property or income by assistance recipient.

(a) If at any time during the continuance of assistance the recipient thereof becomes possessed of any property or income in excess of the amount stated in the application for assistance, it shall be the duty of the recipient immediately to notify the county office of the receipt or possession of the property or income. The Department of Human Services may either cancel the assistance or alter the amount thereof in accordance with the circumstances.

(b) Any assistance paid after the recipient has come into the possession of the property or income and in excess of his or her need shall be recoverable by the state as a debt due the state.

History. Acts 1939, No. 280, § 30; A.S.A. 1947, § 83-136; Acts 1997, No. 1058, § 20.

Amendments. The 1997 amendment,

in (a), deleted "grants" preceding "the recipient" and rewrote the last sentence; and deleted "grant" preceding "paid after the recipient has come" in (b).

20-76-430. [Repealed.]

Publisher's Notes. This section, prohibiting assignment, garnishment, or attachment of benefits, was repealed by Acts 1997, No. 1058, § 31. The section was

derived from Acts 1939, No. 280, § 27; 1941, No. 308, § 1; A.S.A. 1947, §§ 83-133, 83-147.

20-76-431. Transfer of property prohibited.

(a) No person shall, at any time during the continuance of assistance, grant, sell, transfer title, or in any way dispose of any real property without the consent of the appropriate division of the Department of Human Services. If a recipient of assistance executes and delivers a

deed to real property without the consent of the division, the transaction shall be deemed prima facie fraudulent as to the division.

(b) To overcome the presumption of fraud, an immediate investigation will be made to determine whether the property was transferred within the rules and regulations of the division. The fair market value of the transferred property shall be considered as available toward meeting the needs of the recipient.

History. Acts 1939, No. 280, § 28; 1953, No. 177, § 6; A.S.A. 1947, § 83-134.

20-76-432. Removal to another county.

(a) Any recipient of assistance who is moved, moves, or is taken to another county in this state shall be required to notify the appropriate division of the Department of Human Services of the removal and may, if otherwise eligible, receive assistance in the county to which he or she has moved.

(b) The office of the county from which he or she has moved shall transfer all necessary records relating to the recipient to the office of the county to which he has moved.

History. Acts 1939, No. 280, § 34; **Amendments.** The 1997 amendment A.S.A. 1947, § 83-140; Acts 1997, No. 1058, § 21. rewrote (a).

20-76-433. Records — Confidentiality.

(a)(1)(A) Records identifying persons participating in programs administered by the Department of Human Services may be disclosed only as expressly authorized by law or regulation creating or implementing the programs.

(B) The rule-making power of the department shall include the power to establish and enforce reasonable rules and regulations governing the custody, use, and preservation of the records, papers, files, and departmental communications.

(2)(A)(i) The various executive departments and agencies of the state shall exchange information as necessary for each department and agency to accomplish objectives and fulfill obligations created or imposed by federal or state law.

(ii) The various executive departments and agencies of the state shall execute operating agreements to facilitate the exchanges of information authorized by this chapter.

(B) Information received pursuant to this chapter shall be maintained by persons with a business need to access the information and shall be further disclosed only in accordance with any confidentiality provisions applicable to the department or agency originating the information.

(b) Except for purposes directly connected with the administration of public assistance and in accordance with the rules and regulations of

the department, it shall be unlawful for any person or persons to solicit, disclose, receive, make use of, authorize, knowingly permit, participate in, or acquiesce in the use of any list of or names of or any information concerning persons applying for or receiving assistance directly or indirectly derived from the records, papers, files, or communications of the department or acquired in the course of the performance of official duties.

(c) Any person violating the provisions of this section or any rules promulgated under the power hereof shall upon conviction be deemed guilty of a misdemeanor and shall be subject to a fine of not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100) or confined in the county jail for not less than ten (10) days nor more than sixty (60) days or shall be subjected to both a fine and jail sentence.

History. Acts 1939, No. 280, § 32; 1941, No. 274, § 6; A.S.A. 1947, § 83-138; Acts 1997, No. 1058, § 22. **Amendments.** The 1997 amendment rewrote (a) and (b).

RESEARCH REFERENCES

Ark. L. Rev. Watkins, Access to Public Records Under the Arkansas Freedom of Information Act, 37 Ark. L. Rev. 741.

20-76-434. Maintenance of list of recipients.

(a) In order to ensure that the needy citizens of the State of Arkansas are receiving all benefits to which they may be entitled, the Department of Human Services shall maintain a list of all recipients of state assistance reflecting each recipient's income, social security number, and the programs in which the recipient is participating.

(b) The information required for the list shall be obtained from the recipient's records and such other sources necessary to ensure accuracy and completeness.

(c) The recipient shall be provided a release form to sign in order to obtain the required information. Failure to sign the release form shall result in termination of the recipient from the program of assistance until a review can be made of the eligibility of the recipient by the department from public records.

History. Acts 1981, No. 934, §§ 30, 31; A.S.A. 1947, §§ 83-124.1, 83-124.2; Acts 1997, No. 208, § 23; 1997, No. 1058, § 23.

A.C.R.C. Notes. Pursuant to § 1-2-207, this section is set out above as amended by Acts 1997, No. 1058. Former subsection (b) was amended by Acts 1997, No. 208 to read as follows: "(b) No person in the State of Arkansas shall, on the ground of race, color, sex, disability, religion, or national origin, be excluded from participation in or be subjected to discrim-

ination under any program or activity enumerated in this section."

Acts 1997, No. 208, § 1, codified as § 24-4-408, provided: "Legislative intent and purpose. The General Assembly hereby acknowledges that many of the laws relating to individuals with disabilities are antiquated, functionally outmoded, derogatory, ambiguous or are inconsistent with more recently enacted provisions of the law. Consequently, it is the intent of the General Assembly and

the purpose of this act to clarify the relevant chapters of Titles 1, 6, 9, 13, 14, 16, 17, 20, 22, 23, and 27 of the Arkansas Code Annotated of 1987.”

Amendments. The 1997 amendment by No. 1058 rewrote the section.

20-76-435. No entitlement to assistance.

(a) This chapter shall not be interpreted to entitle any individual or family to assistance under any program created, implemented, or funded under or pursuant to this chapter.

(b) All assistance provided under this chapter shall be subject to the provisions of any amending or repealing act that may hereafter be passed, and no recipient shall have any claim for compensation or otherwise by reason of his or her assistance being affected in any way by any amending or repealing act.

History. Acts 1939, No. 280, § 37; A.S.A. 1947, § 83-142; Acts 1997, No. 1058, § 24.

Amendments. The 1997 amendment added (a); and rewrote (b).

20-76-436. Recovery of benefits from recipients' estates.

(a) Federal or state benefits in cash or in kind, including, but not limited to, Medicaid, Aid to Families with Dependent Children, Transitional Employment Assistance, Temporary Assistance for Needy Families, and food stamps distributed or paid by the Department of Human Services as well as charges levied by the department for services rendered shall upon the death of the recipient constitute a debt to be paid. The department may make a claim against the estate of a deceased recipient for the amount of any benefits distributed or paid or charges levied by the department.

(b)(1) The department shall not seek recovery against the estate of a deceased recipient for the amount of any benefits distributed or paid or charges levied if the recovery is not cost effective or if the recovery works an undue hardship on the heirs or devisees of the decedent's estate.

(2) In determining the existence of an undue hardship, the department shall consider factors including, but not limited to, the following:

(A) The estate asset subject to recovery is the sole income-producing asset of the beneficiaries of the estate;

(B) Without receipt of the proceeds of the estate, a beneficiary would become eligible for federal or state benefits;

(C) Allowing a beneficiary to receive the inheritance from the estate would enable a beneficiary to discontinue eligibility for federal or state benefits;

(D) The estate asset subject to recovery is a home with a value of fifty percent (50%) or less of the average price of homes in the county where the homestead is located, as of the date of the beneficiary's death; or

(E) There are other compelling circumstances.

(c) To the extent that there is any conflict between the preceding criteria and the standards that may be specified by the Secretary of the Department of Health and Human Services, the federal standards shall prevail.

(d) Applicants for federal or state benefits shall be notified in writing in prominent type on the application form that the department may make a claim against their estate.

History. Acts 1993, No. 415, § 1; 1997, No. 957, § 1; 1997, No. 1058, § 25; 2001, No. 1480, § 1.

Amendments. The 1997 amendment by No. 957 added (b)-(d); and inserted "Temporary Assistance for Needy Families" in (a).

The 1997 amendment by No. 1058 inserted "Transitional Employment Assistance" in present (a).

The 2001 amendment substituted "fifty percent (50%) or less of the average price of homes in the county where the homestead is located, as of the date of the beneficiary's death;" for "twenty-five thousand dollars (\$25,000) or less as determined by the most recent county assessment" in (b)(2)(D).

CASE NOTES

ANALYSIS

Applicability.
Duty to inform.
Estoppel.
Jurisdiction.

Applicability.

This section creates a new right, is not remedial, and thus, cannot be applied retroactively. *Estate of Wood v. Arkansas Dep't of Human Servs.*, 319 Ark. 697, 894 S.W.2d 573 (1995).

Duty to Inform.

This section does not impose upon the department a duty to inform Medicaid recipients of its right to file claims against their estates for benefits paid. *Arkansas Dep't of Human Servs. v. Estate of Lewis*, 325 Ark. 20, 922 S.W.2d 712 (1996).

Where the Probate Court allowed a claim against decedent's estate for an amount which represented medicaid nursing home payments made between December 26, 1991, and October 4, 1993, the

award constituted an improper, retroactive application of this section. *Estate of Wood v. Arkansas Dep't of Human Servs.*, 319 Ark. 697, 894 S.W.2d 573 (1995).

Estoppel.

The department is estopped from asserting a claim against a recipient's estate only where the recipient relied upon affirmative misrepresentations made by the department and not where the department was silent regarding its right to recoup benefits. *Arkansas Dep't of Human Servs. v. Estate of Lewis*, 325 Ark. 20, 922 S.W.2d 712 (1996).

Jurisdiction.

This section creates a debt upon the death of the recipient which may be asserted as a claim against the estate; the Probate Court has jurisdiction over such a claim pursuant to § 28-50-105(a)(4). *Estate of Wood v. Arkansas Dep't of Human Servs.*, 319 Ark. 697, 894 S.W.2d 573 (1995).

20-76-437. Reporting — Transitional employment assistance.

The Department of Human Services, the Arkansas Employment Security Department, the Department of Health, the Department of Education, the Department of Higher Education, the Department of Workforce Education, the Arkansas Development Finance Authority, the Arkansas Economic Development Commission, and the Arkansas State Highway and Transportation Department shall report periodi-

cally to the House Committee on Public Health, Welfare, and Labor and Senate Committee on Public Health, Welfare, and Labor regarding the provision of services to Transitional Employment Assistance program recipients.

History. Acts 1997, No. 1058, § 17; 1999, No. 1567, § 17.

Amendments. The 1999 amendment inserted "Arkansas" preceding "Employment Security," "the Department of Workforce Education," and "State" preced-

ing "Highway," and substituted "Arkansas Economic Development" for "Arkansas Industrial Development" and "periodically" for "quarterly," and made stylistic changes.

20-76-438. Purpose.

(1) The General Assembly finds that it is important that all families in this state be strong and economically self-sufficient.

(2) It is in the public interest that eligible persons and families of lesser means be given time-limited cash assistance along with an opportunity to obtain and retain employment that is sufficient to sustain their families.

(3) As a part of this transition from welfare to work, it is in the public's interest that various supportive services and, in some cases, education and training be offered to these families to enable them to make this transition.

(4) The General Assembly finds that education and training are essential to long-term career development and self-sufficiency.

(5) The General Assembly further finds that employment improves the quality of life for parents and children by increasing family income and assets and by improving self-esteem.

(6) Therefore, it is in the public interest that our state provide time-limited cash assistance and supportive services to our most vulnerable citizens and their children.

History. Acts 1999, No. 1567, § 1.

20-76-439. Self-sufficiency — Assessments, personal responsibility agreements, and supportive services.

(a)(1) At the time of application for transitional employment assistance, the Department of Human Services and the applicant shall sign a personal responsibility agreement.

(2) An applicant shall not be required to engage in job search activities if the applicant does not have available child care and transportation services.

(b)(1) Within thirty (30) calendar days after an application for transitional employment assistance has been approved, the department shall conduct an in-depth assessment of the functional educational level, skills, prior work experience, and employability of the participant.

(2) The department shall utilize testing instruments which shall yield education levels, skill levels, work readiness, and employability of the participant.

(3)(A) The assessment shall identify barriers to immediate employment as well as barriers that may prevent the participant from increasing his or her long-term earnings and from taking advantage of opportunities for employment advancement.

(B) The barriers to be assessed shall include, at least, domestic violence, substance abuse, learning disabilities, and unmet client needs for supportive services such as child care, transportation, assistance with job-related expenses, housing, health care, job readiness preparation, and education and training.

(c) The department shall inform the participant of supportive services that may be available to alleviate barriers to employment and increase long-term earnings and opportunities for employment advancement.

(d) After the skills assessment has been completed and the participant has been informed about the availability of supportive services, the department shall work with the participant to develop an individual employment plan that:

(1) Sets forth an employment goal for the participant and a plan for moving the participant into employment;

(2) Is designed to the greatest extent possible to move the participant into employment, help the participant maintain employment, and increase the participant's long-term earnings and opportunities for employment advancement;

(3) Makes education and training a priority of allowable work activities, subject to federal work participation requirements and taking into account the caseload reduction credit, when the assessment warrants that education and training are the best means to achieving long-term economic self-sufficiency;

(4) Lists the supportive services that are generally available under the program and the methods by which a participant may access these services;

(5) Describes the services the department shall provide to enable participants to obtain and maintain employment and increase their potential long-term earnings and opportunities for employment advancement; and

(6) Designates the number of hours that he or she must participate in work activities to meet participation standards, unless the participant is deemed by the department to be exempt or temporarily deferred from work participation requirements.

(e)(1) The department shall review the progress of the participant in the program and meet with the participant as necessary to review and revise his or her employability plan.

(2) The department shall inform the participant of his or her time remaining on the lifetime limit on financial assistance and shall reassess the client's needs for supportive services.

(f) The department may, with approval from the Arkansas Transitional Employment Assistance Board, develop and promulgate regulations requiring program applicants who have been determined to be job-ready to engage in job search activities while the application is being processed.

(g) The department shall not require an applicant to engage in job search activities if, in the judgment of the department, the applicant has one (1) or more barriers which if not addressed would prevent the applicant from finding employment.

(h)(1) Prior to requiring the applicant to engage in job search activities, the department shall ask the applicant whether child care or transportation assistance or both will be needed to complete job search activities.

(2) If needed child care and transportation are not available, the applicant shall not be required to engage in job search activities as a condition of application approval.

History. Acts 1999, No. 1567, § 18.

20-76-440. [Repealed.]

Publisher's Notes. This section, concerning transitional employment assistance monitoring systems, was repealed by Acts 2001, No. 1264, § 10. The section was derived from Acts 1999, No. 1567, § 19.

20-76-441. Transitional employment assistance postemployment information and referral program.

The Department of Human Services shall establish a transitional employment assistance postemployment information and referral program to:

(1) Contact all employed program participants and former program participants whose cases have been closed due to employment; and

(2) Inform respondents about the availability of transitional supportive services such as child care, transportation, ARKids First, federal and state earned income tax retention, mentoring, financial credit counseling, individual development accounts, any other supportive services offered by the department, and information about education and training opportunities designed to increase participants' future earning and employment prospects.

History. Acts 1999, No. 1567, § 20.

20-76-442. Transitional employment assistance customer service review program.

(a) The Department of Human Services shall establish a process to review a statistically valid sample of transitional employment assistance case closures due to noncompliance with program regulations.

(b) The review process shall include the following:

(1) A review of the case file to determine whether the caseworker followed state policy; and

(2) An attempt to contact the family to hear the family's version of the reason for case closure.

(c) The program shall be operational no later than three (3) months after July 1, 1999.

(d) The department shall submit semiannual reports to the Governor, the Arkansas Transitional Employment Board, the Senate Interim Committee on Public Health, Welfare, and Labor, and the House Interim Committee on Public Health, Welfare, and Labor. Each report shall include the following information for the state and each county:

(1) The number of cases reviewed;

(2) The reasons for case closure; and

(3) The findings of the review.

(e) If the board or the Senate Interim Committee on Public Health, Welfare, and Labor and the House Interim Committee on Public Health, Welfare, and Labor find that cases are being mistakenly closed because of caseworker error, the department shall be required to develop and implement a plan for rectifying the problem, which plan shall be subject to board review and approval.

History. Acts 1999, No. 1567, § 21.

20-76-443. Education and training.

(a)(1) The Department of Human Services shall permit Transitional Employment Assistance Program recipients to obtain the education and training they need to obtain jobs that pay wages allowing them to be economically self-sufficient.

(2) Program recipients who are assessed as having basic education deficiencies shall be allowed to combine educational activities leading to a high school diploma or general educational development certificate and employment and work experience. Participants may be required to engage in internships, work experience, or employment. Work requirements shall not exceed fifteen (15) hours per week unless the department certifies that allowing education to count toward program recipients' required work activities would affect the state's ability to meet federal work participation rates. To the extent possible, educational activities shall take place in a work context.

(3) Qualified program recipients shall be allowed to enroll in vocational education courses designed to prepare them for jobs in high growth, high wage occupations. Participants may be required to engage in internships or work experience related to their course of study. Work requirements shall not exceed fifteen (15) hours per week unless the department certifies that allowing education to count toward program recipients' required work activities would affect the state's ability to meet federal work participation rates. The department shall seek to allow at least seven hundred (700) participants this option.

(4) Qualified program recipients shall be allowed to enroll in postsecondary courses leading to a two-year or four-year degree or a five-year teaching degree. Participants may be required to engage in internships or work experience related to their course of study. Work requirements shall not exceed fifteen (15) hours per week unless the department certifies that allowing education to count toward program recipients' required work activities would affect the state's ability to meet federal work participation rates. The department shall seek to allow at least four hundred (400) participants this option.

(5) Participants under each of these options shall be provided the supportive services they need to attend classes and other educational activities, including, at least, child care and transportation.

(b) Program recipients shall be assigned to work activities that prepare them for long-term economic self-sufficiency, including basic, vocational, and postsecondary education where appropriate.

(c) Participation in combined work and education activities shall be deemed to meet program recipients' work activity requirements. The department may require additional or fewer hours of federally defined work activities if it certifies that the state may not meet federal work participation rates after taking into account the caseload reduction credit because recipients enrolled in educational courses are not required to engage in federally defined work activities for the minimum number of hours.

History. Acts 1999, No. 1567, § 22.

CHAPTER 77

MEDICAL ASSISTANCE

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. HEALTH RESOURCES COMMISSION. [REPEALED.]
3. THIRD-PARTY LIABILITY.
4. PRESCRIPTION DRUGS.
5. EYE CARE.
6. UNINSURED CHILDREN'S PROGRAM. [REPEALED.]
7. SPECIAL NEEDS TRUST REVOLVING FUND.
8. HOME INTRAVENOUS DRUG THERAPY SERVICES.
9. MEDICAID FRAUD FALSE CLAIMS ACT.
10. DONATED DENTAL SERVICES PROGRAM OF ARKANSAS.
11. ARKIDS FIRST PROGRAM ACT.
12. MEDICAID PROGRAM FOR LOW-INCOME DISABLED WORKING PERSONS.
13. MEDICAL ASSISTANCE PROGRAMS INTEGRITY LAW.
14. PRESCRIPTION DRUG ACCESS IMPROVEMENT ACT.

A.C.R.C. Notes. Acts 2001, No. 1638, § 19, provided: "MEDICAL SERVICES — STATE MEDICAID PROGRAM/PERSONAL CARE PROGRAM. It is the Leg-

islative intent that the Department of Human Services in its administration of the Arkansas Medicaid Program set forth Medicaid provider participation require-

ments for 'personal care providers' that will insure sufficient available providers to meet the required needs of all eligible recipients, to include insuring available in-home services twenty-four hours a day and seven days a week for personal care. For the purposes of this section, 'private care agencies' are defined as those providers licensed by the Department of Labor as of January 1, 1999, certified as ElderChoices Providers as of January 1, 1999 and who furnish in-home staffing services for respite, chore services, and homemaker services, and carrying liability insurance of not less than one million dollars (\$1,000,000.00) covering their employees and independent contractors while they are engaged in providing services, such as personal care, respite, chore services, and homemaker services. The purpose of this section is to allow the private care agencies defined herein to be eligible to provide Medicaid reimbursed personal care services on Saturdays and Sundays only, and does not supercede Department of Human Services rules establishing monthly benefit limits and prior authorization requirements. The availability of providers shall not require the Department of Human Services to reimburse for 24 hours per day of personal care services. The Arkansas Department of Human Services, Medical Services Division shall take such action as required by the Health Care Financing Administration to amend the Arkansas Medicaid manual to include, private care agencies defined herein, as qualified entities to provide Medicaid reimbursed personal care services. The private care agencies defined herein shall comply with rules and regulations promulgated by the Arkansas Department of Health which shall establish a separate licensure category for the private care agencies defined herein for the provision of Medicaid reimbursable personal care services on weekends. The Arkansas Department of Health shall supervise the conduct of the private care agencies defined herein. The purpose of this section is to insure the care provided by the private care agencies defined herein, is consistent with the rules and regulations of the Arkansas Department of Health.

"The provisions of this section shall be in effect only from July 1, 2001 through June 30, 2003."

Acts 2001, No. 1746, §§ 1 and 2, provided: "SECTION 1. The General Assembly finds that pharmaceutical manufacturer patient assistance programs have the potential to benefit a larger number of low income, uninsured and underinsured Arkansans. However, the current way that such programs are administered has resulted in low participation by health care providers and their patients, and few Arkansans benefit from these programs.

"SECTION 2. (a) The Director of the Department of Health shall, subject to the availability of funds, a regional pilot program to be named 'The Arkansas Pharmacy Outreach Program' to develop systems to facilitate access to pharmaceutical manufacturer patient assistance programs.

"(b) The director may contract with one (1) or more public or private organizations to administer the outreach program.

"(c) The program may:

"(1) Provide consultation to participating health care providers regarding changes to the program;

"(2) Provide patients with information regarding their eligibility for pharmaceutical manufacturer patient assistance programs; and

"(3) Assist health care providers in establishing a program for their patients.

"(d)(1) The director may negotiate with pharmaceutical companies to develop a simplified system to assist low income Arkansans in accessing pharmaceutical manufacturer patient assistance programs.

"(2) Components of the simplified system may include a simplified, single application process and a voucher system for dispensing drugs through local pharmacies.

"(e) The outreach program may assist health care providers in establishing programs for their patients, to provide:

"(1) Consultation with participating health care providers regarding changes to the program;

"(2) Patients with information regarding their eligibility for pharmaceutical manufacturer patient assistance programs; and

"(3) Opportunities to work with representatives of pharmaceutical manufacturers to improve the program.

"(f)(1) The director shall report to the

Legislative Council on the results of the outreach program before October 2, 2002.

"(2) The report shall include information concerning:

"(A) The number of Arkansans benefited by patient assistance programs;

"(B) The value of benefits provided through patient assistance programs; and

"(C) Any other information the director deems relevant."

RESEARCH REFERENCES

ALR. Transsexual surgery as covered operation under state medical assistance program. 2 ALR 4th 775.

Limitation on right of chiropractors and osteopathic physicians to participate in public medical welfare programs. 8 ALR 4th 1056.

Statutes and regulations limiting or restricting funding for abortions sought by indigent women. 20 ALR 4th 1166.

Criminal liability under state laws in connection with application for or receipt of public welfare benefits. 22 ALR 4th 534.

Imposition of civil penalties under state statute, upon medical practitioner for fraud in connection with claims under medicaid, medicare, or similar welfare programs for providing medical services. 32 ALR 4th 671.

Criminal liability of pharmacy or pharmacist for welfare fraud in connection with supplying prescription drugs. 16 ALR 5th 390.

C.J.S. 81 C.J.S., Soc. Sec., § 126.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 20-77-101. Cost-sharing charges for medically indigent.
- 20-77-102. Program for long-term care facility care.
- 20-77-103. Compacts with certain out-of-state hospitals.
- 20-77-104. Double billing — Legislative intent.
- 20-77-105. Double billing — Suspension of medical services provider from Arkansas Medicaid Program.
- 20-77-106. Medical services program for Medicaid-eligible patients of the Arkansas Children's Hospital.
- 20-77-107. Program for indigent medical care — Rules and regulations.
- 20-77-108. Furnishing of annual audit by

SECTION.

- nonprofit Medicaid providers.
- 20-77-109. Medicaid assistance for children — Effect on child support.
- 20-77-110. Increase in reimbursement rate.
- 20-77-111. Data reports.
- 20-77-112 — 20-77-114. [Repealed.]
- 20-77-115. Personal care reimbursement rates.
- 20-77-116. Medicare waiver to authorize high reimbursements in economically disadvantaged counties.
- 20-77-117. "Economically disadvantaged county" defined.
- 20-77-118. State-federal relationship.
- 20-77-119. Finding — Resource eligibility limit.

Cross References. Social services division agreements for indigent medical care, § 20-47-406.

Preambles. Acts 1979, No. 617 contained a preamble which read: "Whereas, it has been brought to the attention of the

Arkansas General Assembly that a limited number of Medicaid Service Providers, including but not limited to nursing homes, have engaged in the practice of receiving payments in full from the Arkansas State Medicaid Program for ser-

vices rendered and in addition have billed and received payments from Medicaid eligibles, parents, spouses, guardians and other payees for identical services or considerations;

"Now, therefore..."

Effective Dates. Acts 1974 (Ex. Sess.), No. 24, § 17: approved July 3, 1974. Emergency clause provided: "It is hereby found and determined by the Sixty-Ninth General Assembly, meeting in Extraordinary Session, that the immediate effectiveness of this Act from its date of passage is necessary for extension of the Medicaid and Prescription Drug Programs to the medically indigent, and to increase vendor payments to nursing homes. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after its date of passage."

Acts 1975 (Extended Sess., 1976), No. 1107, § 4: Jan. 30, 1976. Emergency clause provided: "It is hereby found and determined by the Seventieth General Assembly, meeting in extended session, that the appropriations made herein are essential for the operations of the Children's Hospital. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after the date of its passage and approval."

Acts 1977, No. 416, § 3: Mar. 14, 1977. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that many residents of this State of low income are not eligible for assistance under the present State Medical Care Program eligibility standards; that in many instances a slight increase in Social Security, or other retirement benefits, raises such individuals' income level above the eligibility level for participation in the State's nursing home care program, thereby making such individuals totally ineligible for any nursing home assistance; and that the immediate passage of this Act is necessary to assure to all residents of this State who are qualified and in need of nursing home care, eligibility for receiving public assistance in paying for the class of nursing home care for which they are qualified, to

the extent that the cost thereof exceeds their ability to pay. Therefore, an emergency is hereby declared to exist, and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1979, No. 617, § 3: Mar. 28, 1979. Emergency clause provided: "It is hereby found and determined that the system of double billing or of receiving duplicate payment for the same medical services to a Medicaid eligible has been practiced by a limited number of Medicaid Providers in this State. It is further determined that such practices are unethical and present severe financial hardships on already dependent Arkansas citizens and their families. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 1022, § 3: Apr. 14, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that because of the case *Ricarte v. State*, CR 86-31, a question has arisen over the validity of Act 1107 of the Extended Session of 1976; that this Act is a reenactment of the former law; and that the immediate passage of this Act is necessary to clarify the state of the law on this issue. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1989, No. 942, § 4: July 1, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that the effectiveness of this Act on July 1, 1989 is essential to determine the utilization of Medicaid funds by nonprofit corporations through programs operated by the Department of Human Services; that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1989 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety

shall be in full force and effect from and after July 1, 1989."

Acts 1991, No. 985, § 7: Apr. 8, 1991. Emergency clause provided: "It is hereby found and determined by the Seventy-Eighth General Assembly that it is in the best interest of the people of the State of Arkansas that paternity of the children be established in the most expedient manner for all children of this state; and the smooth transition from current requirements of those of this act require the provisions to become effective immediately upon passage. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 1147, § 5: Apr. 9, 1991. Emergency clause provided: "It is hereby found and determined by the Seventy-Eighth General Assembly that the audit requirements for participating Medicaid providers established pursuant to Section 1 of Act 942 of 1989 have created uncertainty and the same should be amended. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 1239, § 125: July 1, 1993. Emergency clause provided: "It is hereby found and determined by the Seventy-Ninth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1993 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1993 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety, Section 119 shall be in full force and effect from and after the date of passage and approval and the remainder of the Act shall be in full force and effect from and after July 1, 1993."

Acts 1997, No. 179, § 38: Feb. 17, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 10 of the First Extraordinary Session of 1995 abolished the Joint Interim Committee on Public Health, Welfare, and Labor and in its place established the House Interim Committee and Senate Interim Committee on Public Health, Welfare, and Labor; that various sections of the Arkansas Code refer to the Joint Interim Committee on Public Health, Welfare, and Labor and should be corrected to refer to the House and Senate Interim Committees on Public Health, Welfare, and Labor; that this act so provides; and that this act should go into effect immediately in order to make the laws compatible as soon as possible. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1997, No. 1360, § 132: July 1, 1997. Emergency clause provided: "It is hereby found and determined by the Eighty-First General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1997 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1997 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety, Section 115 shall be in full force and effect from and after the date of passage and approval and the remainder of the Act shall be in full force and effect from and after July 1, 1997."

Acts 1999, No. 1537, § 140: July 1,

1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1999 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the de-

lay in the effective date of this Act beyond July 1, 1999 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1999."

20-77-101. Cost-sharing charges for medically indigent.

(a) It is the intent of the General Assembly that the Medicaid medical assistance program administered by the Department of Human Services is intended to be supplemental to other potential sources of payment which are or may be available to pay for the costs of medical care delivered to residents of this state. To ensure that the appropriated funds are available to meet the needs of those residents, it is hereby declared the public policy of the State of Arkansas that the program is the payor of last resort to supplement and not supplant other sources which are or may be available to any individual, except when federal requirements under title V specify otherwise.

(b) The appropriate division of the department, in order to comply with Pub. L. 92-603, § 208, may, with respect to the medically indigent:

(1) Provide that an enrollment fee, premium, or similar charge may be imposed;

(2) Specify the amount of and the period of liability for the charges; and

(3) Define the state's policy regarding the effect on the recipient of nonpayment of required charges.

History. Acts 1974 (Ex. Sess.), No. 24, § 13; 1993, No. 249, § 1.

ferred to in this section, is codified as 42 U.S.C. §§ 1396a and 1396a note.

U.S. Code. Pub. L. 92-603, § 208, re-

20-77-102. Program for long-term care facility care.

(a) The appropriate division of the Department of Human Services is authorized to establish a program to provide for long-term care facility care for all residents of this state who are found to be qualified for and in need of long-term care facility care, as provided in this section.

(b) The program shall consist of:

(1) Long-term care facility care for those persons eligible to receive medical care benefits under title XIX of the Social Security Act in accordance with federal and state regulations promulgated therefor, within the maximum limitations provided under federal law or regulation for federal reimbursement for long-term care facility care under title XIX of the Social Security Act; and

(2) A program of state financial assistance for long-term care facility care for persons who are not eligible for medical care benefits under title XIX of the Social Security Act to the extent that the cost of the class of long-term care facility care for which the person is determined to be qualified exceeds the ability of the person to pay for the care.

(c)(1) However, the deputy director of the appropriate division of the department shall, in establishing the level of payment for services and benefits for long-term care facility care to be provided under the provisions of this section, promulgate appropriate rules and regulations to limit the cost of services to the State of Arkansas to funds available or estimated to be available to the appropriate division for that purpose during each fiscal year.

(2) The regulations promulgated by the deputy director shall provide that all persons eligible within each class of eligibility shall receive equal consideration for benefits.

(3) The deputy director of the appropriate division of the department is authorized to promulgate such additional rules and regulations as deemed to be necessary to prevent abuse of benefits under this section, yet make available to the residents of this state who are eligible the full benefits of this section within the limitation of funds available therefor.

(d) The Director of the Department of Human Services, with the approval of the Governor and after obtaining the advice of the Legislative Council, may provide for an expanded comprehensive program of long-term care facility care for residents of this state if he or she deems the program advisable or appropriate in order to take advantage of expanded federal programs or participation therein, within the limitation of funds that may be available to the department therefor.

History. Acts 1965 (2nd Ex. Sess.), No. 14, § 7; 1977, No. 416, § 1; A.S.A. 1947, § 83-162.

U.S. Code. Title XIX of the Social Security Act referred to in this section is codified in 42 U.S.C. § 1396 et seq.

20-77-103. Compacts with certain out-of-state hospitals.

(a) The Governor is authorized to enter into compacts or agreements with one (1) or more public-supported hospitals located within a reasonable distance from the Arkansas border which are used as teaching hospitals for state-supported medical schools in adjoining states. Under the terms of these agreements, the public-supported teaching hospitals shall agree to furnish medical and hospital services for indigent citizens of this state where payment is not available through public welfare or other programs and, upon the payment for these services, from the appropriation provided for by law, of an amount required to reasonably reimburse the public-supported hospital for the costs of these services.

(b) For the purposes of this section, a "public-supported hospital within a reasonable distance from the border of this state" shall mean a public-supported hospital located within fifty (50) miles of the border of Arkansas.

(c) In determining the amount of payments to be made to any public-supported hospital used as a teaching hospital as provided in subsections (a) and (b) of this section, the Governor shall determine the extent to which medical and hospital services have been received by Arkansas citizens during previous years. These payments shall be based upon reasonable estimates of the cost of providing medical services for the year in which payments are to be made.

(d) Each agreement shall be for a fiscal year period but may be renewed, provided funds are appropriated for that purpose, upon mutual agreement of the Governor and the appropriate officials of the public-supported hospital in the other state.

History. Acts 1969, No. 490, § 2; A.S.A. 1947, § 83-220.

Publisher's Notes. Acts 1969, No. 490, § 1 provided that the legislature had determined that many indigents were receiving medical care in states adjoining Arkansas and that payment for those services was a necessary expenditure of government.

20-77-104. Double billing — Legislative intent.

(a) It is the specific intent of this section and § 20-77-105 to prohibit any provider of medical services who participates in the Arkansas Medicaid program to bill or receive payment from any Medicaid-eligible person, his or her spouse, relative, guardian, or any other prospective payee for services or considerations for which payment is either payable in full or has been paid in full by the program.

(b) It is not the intent of this section and § 20-77-105 to eliminate any co-payment requirement on the part of any Medicaid-eligible person or his or her payee as required or as provided for in the Arkansas State Plan for Medicaid as approved by the United States Department of Health and Human Services.

(c) It is the intent of this section and § 20-77-105 to prohibit any payment by any Medicaid-eligible person or his or her payee in excess of the rate or fee for service that the medical services provider has agreed to accept as payment in full as evidenced by written agreement or contract to participate in the program.

History. Acts 1979, No. 617, § 1; A.S.A. 1947, § 83-172.

20-77-105. Double billing — Suspension of medical services provider from Arkansas Medicaid Program.

(a) Any provider of medical services which shall be determined by the administrator of the single state agency for Medicaid to purposely engage in the practice of seeking or receiving double or duplicate payments for the same services either through double billing or through any other device may be suspended from the Arkansas Medicaid Program for a period of time not less than ninety (90) days or not more than one (1) year.

(b) In addition, as a condition of and prior to reinstatement to the program, the medical services provider shall make full and reasonable restitution to the Medicaid-eligible person or his or her payee for all payment collected.

History. Acts 1979, No. 617, § 2;
A.S.A. 1947, § 83-173.

20-77-106. Medical services program for Medicaid-eligible patients of the Arkansas Children's Hospital.

(a) The Arkansas Children's Hospital, as recognized by § 20-78-102, is authorized to enter into agreements with the appropriate division of the Department of Human Services to establish and maintain a medical services program for Medicaid-eligible patients of the Arkansas Children's Hospital and to transfer funds to the Social Services Fund Account pursuant to such an agreement.

(b) Such an agreement between the Arkansas Children's Hospital and the appropriate division of the department shall be in compliance with federal law and shall meet the qualifications necessary for federal funds to be paid for the care of eligible patients in the Arkansas Children's Hospital.

(c) The Chief Fiscal Officer of the State shall make rules and regulations for the transfer of state funds appropriated for the Arkansas Children's Hospital in order to reimburse the account for expenditures made by the appropriate division of the department in accordance with agreements made between the Arkansas Children's Hospital and the appropriate division of the department.

History. Acts 1975 (Extended Sess., 1976), No. 1107, § 3; reen. Acts 1987, No. 1022, § 1.

20-77-107. Program for indigent medical care — Rules and regulations.

(a)(1) The appropriate division of the Department of Human Services is authorized to establish and maintain an indigent medical care program.

(2) However, eligibility regulations for the ARKids First Program Act, § 20-77-1101 et seq., shall not include an assets or a resource test for children or families of children eighteen (18) years of age or younger.

(b) The deputy director is further authorized to enter into separate agreements with the University of Arkansas for Medical Sciences and private institutions in order to provide maximum medical care for the indigent persons of this state.

History. Acts 1989, No. 821, § 7; 1995, No. 710, § 6; 2001, No. 724, § 1.

Amendments. The 2001 amendment

redesignated former (a) as present (a)(1) and added (a)(2).

Cross References. Department of Hu-

man Services authorized to issue rules to assure compliance with federal statutes, rules, and regulations, § 25-10-129. Volunteer immunity for licensed health care professionals, § 16-6-201.

20-77-108. Furnishing of annual audit by nonprofit Medicaid providers.

(a) Every nonprofit corporation, except those licensed under § 20-9-201 et seq., which is eligible to receive payments of twenty-five thousand dollars (\$25,000) or more for services supplied as a Medicaid provider shall, as a condition of enrollment, provide the Department of Human Services with an annual financial and compliance audit. The audit shall cover the entire operations of the nonprofit organization and be in accordance with the "Guidelines for Financial and Compliance Audits of Programs Funded by the Arkansas Department of Human Services" as promulgated by the department.

(b) Every nonprofit corporation licensed under § 20-9-201 et seq. which is eligible to receive payments of twenty-five thousand dollars (\$25,000) or more for services supplied as a Medicaid provider shall, as a condition of enrollment, provide the department with an annual financial audit. The audit shall cover the entire operations of the organization and be in accordance with the "Guidelines for Financial and Compliance Audits of Programs Funded by the Arkansas Department of Human Services".

(c) The department is specifically authorized to promulgate regulations establishing subrecipient and provider audit requirements for all programs funded through the department.

History. Acts 1989, No. 942, § 1; 1991, No. 1147, § 1.

20-77-109. Medicaid assistance for children — Effect on child support.

(a) By accepting Medicaid assistance for or on behalf of a child, the recipient thereof shall be deemed to have assigned to the Office of Child Support Enforcement and any appropriate division of the Department of Human Services any rights to medical support, and for collection and distribution under title IV-D of the Social Security Act, any rights to child support from any other person as the recipient may have:

(1) In his or her own behalf or in behalf of any other family member for whom the recipient is receiving assistance; and

(2) Accrued at the time the assistance, or any portion thereof, is accepted.

(b) The recipient shall have the right to revoke the assignment for the collection and distribution of child support by requesting revocation of the assignment in writing; however, a revocation shall not affect the requirements of § 20-77-307.

(c) Support rights assigned to the department under this section shall constitute an obligation owed to the State of Arkansas by the

person responsible for providing the support, and the obligation shall be collectible under all legal processes.

(d) The appropriate division of the department shall give notice, in writing, to each applicant for assistance. This notice shall state that acceptance of assistance would invoke the provisions of subsection (a) of this section and result in an assignment under subsection (a) of this section.

History. Acts 1991, No. 985, §§ 1-3; 1993, No. 1242, § 6.

Publisher's Notes. Acts 1993, No. 957, § 4 transferred the Child Support Enforcement Unit from the Division of Economic and Medical Services of the Department of Human Services to the Department of Finance and Administration — Revenue

Division and renamed it the "Office of Child Support Enforcement".

U.S. Code. Title IV-D of the Social Security Act, referred to in this section, is codified as 42 U.S.C. § 651 et seq.

Cross References. Child Support Enforcement Unit — Employment of attorneys, § 9-14-210.

CASE NOTES

Applicability.

The Child Support Enforcement Unit did not have authority to challenge a court order approving an agreement between the parents of a child by which the mother accepted a lump sum payment from the father in full satisfaction of the father's child support obligations, past, present, and future as there was no indication in

the record that the mother ever accepted medicaid assistance for or on behalf of the child here involved. *Maxwell v. Ark. Child Support Enforcement Unit*, 70 Ark. App. 249, 16 S.W.3d 293 (2000).

Cited: *State Office of Child Support Enforcement v. Harnage*, 322 Ark. 461, 910 S.W.2d 207 (1995).

20-77-110. Increase in reimbursement rate.

Notwithstanding any other provision in federal law or departmental commitment which may exist to the contrary, the Department of Human Services shall not increase any reimbursement rate to any provider or provider groups supported in whole or in part by funds administered by the department, nor shall it adopt any other rule, regulation, or amendment to the Arkansas Medicaid Program that would result in an obligation of the general revenues of the state without first seeking and receiving the approval of the Governor and the Chief Fiscal Officer of the State.

History. Acts 1993, No. 1239, § 73.

20-77-111. Data reports.

(a) The Director of the Department of Human Services shall cause to be prepared a compilation of data on the Arkansas Medicaid Program.

(b)(1) The report shall be issued quarterly and shall include comparisons of expenditures and recipients for the quarter with those of the previous quarters and for the same period the previous year.

(2) It shall include other comparisons in the format as may be requested by the Legislative Council, the Arkansas Health Resources Commission, the House Interim Committee on Public Health, Welfare,

and Labor, and the Senate Interim Committee on Public Health, Welfare, and Labor or appropriate subcommittees thereof to which the reports are to be delivered.

(c)(1) The report shall also identify any changes in eligibility requirements, level of benefits, methods or rates of reimbursement, and any program adjustments implemented to achieve savings in any category of the program.

(2) The report shall also identify any increase or decrease in expenditures as a result of any of these changes in the program.

History. Acts 1993, No. 1239, § 117; 1997, No. 179, § 32.

A.C.R.C. Notes. The Arkansas Health Resources Commission, referred to in subdivision (b)(2), was abolished by Acts 1999, No. 1133, §§ 1, 2 and Acts 1999, No. 638, § 1.

Amendments. The 1997 amendment substituted "House and Senate Interim Committees" for "Joint Interim Committee" and inserted "or appropriate subcommittees thereof."

20-77-112 — 20-77-114. [Repealed.]

Publisher's Notes. Former §§ 20-77-112 — 20-77-114, concerning reimbursement for mandated expenditures for ICF/MR facilities, mandated costs for nursing facilities, and child health management services, were repealed by Acts

1999, No. 1537, §§ 106, 108, 110. These sections were derived from the following sources:

20-77-112. Acts 1997, No. 1360, § 103.

20-77-113. Acts 1997, No. 1360, § 110.

20-77-114. Acts 1997, No. 1360, § 120.

20-77-115. Personal care reimbursement rates.

Personal care reimbursement rates shall be established at twelve dollars and thirty-five cents (\$12.35) per unit or at lesser amounts as may be established for a program of client-directed personal care which may be developed and implemented by the Department of Human Services.

History. Acts 1997, No. 1360, § 125.

20-77-116. Medicare waiver to authorize high reimbursements in economically disadvantaged counties.

(a) The General Assembly finds that:

(1) Certain economically disadvantaged counties in this state are in dire need of additional access to medical treatment;

(2) Improved access to medical treatment in economically disadvantaged counties can be achieved by offering incentives to physicians and health care facilities;

(3) If Medicare reimbursements were based on need for access to care rather than on cost of living, the resulting increase in Medicare reimbursements would make this state's economically disadvantaged counties more attractive to physicians and would allow healthcare facilities in those counties to upgrade their medical services; and

(4) As a result of increased Medicare reimbursements, more patients in economically disadvantaged counties would seek early medical treatment, thus reducing the severity of their medical conditions and the expense of treatment.

(b) It is the purpose of this section, § 20-77-117, and § 20-77-118 to seek an incentive whereby the number of physicians may be increased and the quality of health care facilities may be improved in this state's economically disadvantaged counties.

History. Acts 1999, No. 1595, § 1.

20-77-117. "Economically disadvantaged county" defined.

For purposes of this section, § 20-77-116, and § 20-77-118, "economically disadvantaged county" means any county of this state in which twenty-five percent (25%) or more of the population lives below the poverty level as defined by the federal government.

History. Acts 1999, No. 1595, § 2.

20-77-118. State-federal relationship.

(a) The Department of Human Services shall seek a Medicare reimbursement policy waiver or appropriate cooperative relationship with the federal government to permit Arkansas to create a ten-year demonstration project in this state's economically disadvantaged counties for the purpose of increasing the number of physicians and improving the health care facilities in those economically disadvantaged counties.

(b) The waiver application will request the Health Care Financing Administration of the United States Department of Health and Human Services to allow Medicare reimbursements for this state's economically disadvantaged counties to be set at the same rate as that of San Francisco.

History. Acts 1999, No. 1595, § 3.

20-77-119. Finding — Resource eligibility limit.

(a) The General Assembly finds that:

(1) The income of many elderly Arkansans slightly exceeds the Medicaid eligibility level;

(2) Without adequate health care, many elderly Arkansans will develop more serious health problems, causing them to become debilitated and resulting in loss of independence, higher health costs, and possibly death; and

(3) Expanded Medicaid coverage would improve the health of elderly Arkansans, extend their lives, and reduce their health costs.

(b) When funds become available, the Department of Human Services shall raise the resource eligibility limit for persons aged sixty-five

(65) and over to four thousand dollars (\$4,000) for a single individual and six thousand dollars (\$6,000) for a married couple.

History. Acts 2001, No. 1086, §§ 1, 2.

SUBCHAPTER 2 — HEALTH RESOURCES COMMISSION

A.C.R.C. Notes. This subchapter was repealed by Acts 1999, No. 638, § 3 and Acts 1999, No. 1133, § 2. The subchapter was derived from the following sources:

20-77-201. Acts 1993, No. 591, § 1.
20-77-202. Acts 1993, No. 591, § 2;
1997, No. 250, § 204; 1997, No. 1354,
§ 38.

20-77-203. Acts 1993, No. 591, § 3.

20-77-204. Acts 1993, No. 591, § 4.

20-77-205. Acts 1993, No. 591, §§ 5-8.

Acts 1999, No. 1133, § 1 provided: "The following are hereby abolished:

"(1) The Alternative Fuels Commission;
"(2) The Alternate Fuels Advisory Committee;

"(3) The Board to Prescribe Restrictions Under Which Retired Police Officers May Carry Concealed Weapons;

"(4) The Community Work, Recreation, & Youth Opportunities Commission;

"(5) The Fiscal Resource Advisory Commission;

"(6) The Arkansas Health Resources Commission;

"(7) The Buffalo National River Commission; and

"(8) The Catastrophic Financial Loss Board."

Acts 1999, No. 638, §§ 1 and 2 provided: "SECTION 1. Purpose. The Arkansas Health Resources Commission was created by Act 591 of 1993. The commission was originally funded by residual monies of a Medicaid rebate made in 1984 to the Department of Human Services. The purpose of the commission was to study the health care system in Arkansas, propose goals and measures to improve and rationalize the system, and monitor progress towards the goals established. The com-

mission has not been provided appropriations for operations since June 30, 1995. A balance of approximately eight thousand dollars (\$8,000) remains on the books of the Treasurer of State in the name of the commission. This act abolishes the Arkansas Health Resources Commission, and transfers the fund balance to the Department of Human Services — Grants Fund (DGF).

"SECTION 2. The Arkansas Health Resources Commission is hereby abolished. Any fund balance on the books of the Treasurer of State in the name of the Health Resources Commission shall be transferred to the Department of Human Services — Grants Fund (DGF) for commitment to the Medicaid Program."

Publisher's Notes. Former subchapter 2, concerning the Health Care Access Program, was repealed by Acts 1993, No. 591, § 9. The former chapter was derived from the following sources:

20-77-201. Acts 1985, No. 411, § 1; A.S.A. 1947, § 83-221; Acts 1991, No. 151, § 1; 1991, No. 353, § 1.

20-77-202. Acts 1985, No. 411, § 3; A.S.A. 1947, § 83-223; Acts 1991, No. 151, § 2; 1991, No. 353, § 2.

20-77-203. Acts 1985, No. 411, § 4; A.S.A. 1947, § 83-224; Acts 1991, No. 151, § 3; 1991, No. 353, § 3.

20-77-204. Acts 1985, No. 411, § 2; A.S.A. 1947, § 83-222; Acts 1991, No. 151, § 4; 1991, No. 353, § 4; 1993, No. 403, § 10.

20-77-205. Acts 1985, No. 411, §§ 1, 5; A.S.A. 1947, §§ 83-221, 83-225; Acts 1991, No. 151, § 5; 1991, No. 353, § 5.

Former § 20-77-204 was also amended by Acts 1993, No. 403, § 10 which was subsequently subject to this repeal.

SUBCHAPTER 3 — THIRD-PARTY LIABILITY

SECTION.

- 20-77-301. Action by Department of Human Services.
- 20-77-302. Action by recipient alone — Reimbursement of division.
- 20-77-303. Action by division and recipient.
- 20-77-304. Notice of action or claim — Intervention or consolidation.
- 20-77-305. Notice to Department of Human Services of award or settlement by recipient required.
- 20-77-306. Liability of third parties to Department of Human Services.

SECTION.

- 20-77-307. Assignment to Department of Human Services of rights of recovery.
- 20-77-308. Release of information to Department of Human Services.
- 20-77-309. Denial or reduction of benefits — Insurance policies.
- 20-77-310. Denial or reduction of benefits — Service plan corporation contracts.
- 20-77-311. Denial or reduction of benefits — Health care providers.
- 20-77-312. Denial or reduction of benefits — Provisions not applicable to Medicaid.
- 20-77-313. Billing statements.

Effective Dates. Acts 1981, No. 500, § 14: Mar. 16, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that it is essential to establish third party liability for all parties that are liable to pay the medical cost of a Medicaid recipient and that this Act is designed to accomplish this purpose and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 463, § 8: Mar. 30, 1987. Emergency clause provided: "It is hereby found and determined by the Seventy-Sixth General Assembly that the third party liability and Medicaid eligibility laws of this state are in immediate need of amendment due to Federal requirements and resulting collection efforts and that this act is necessary to accomplish that purpose. Therefore, an emergency is hereby declared to exist, this act being immediately necessary for the preservation of public peace, health, and safety shall be in full force and effect, from and after its passage and approval."

20-77-301. Action by Department of Human Services.

(a) When medical assistance benefits are provided or will be provided to a medical assistance recipient because of injury, disease, or disability for which another person is liable, the appropriate division of the Department of Human Services shall have a right to recover from the person the cost of benefits so provided. The department may, to enforce the right, institute and prosecute legal proceedings against the third person who may be liable.

(b) No action taken on behalf of the division pursuant to this section or any judgment rendered in the action shall be a bar to any action upon the claim or cause of action of the recipient, his or her guardian, personal representative, estate, or survivors against the third person who may be liable for the injury. Nor shall any action operate to deny to

the recipient the recovery for that portion of any damages not covered hereunder.

(c) The department shall likewise have the authority to recover the cost of benefits for medical care provided to indigent persons from third persons, whether or not the care was provided pursuant to the Arkansas Health Care Access Program, another program administered by the department, or a program administered through another department or agency of state government. The department shall remit to other departments or agencies of state government any amounts recovered, less its pro rata share and costs of collection, for care provided by them.

(d)(1) In actions in tort hereunder, no contributory or comparative fault of a recipient shall be attributed to the state, nor shall any restitution awarded to the state be denied or reduced by any amount or percentage of fault attributed to a recipient.

(2) Notwithstanding subdivision (d)(1) of this section, if the recipient used a device, machine, or product after being warned, either verbally or in writing, that the use, misuse, or improper operation of the device, machine, or product was dangerous, risky, or could result in injury or harm to the recipient, then the statutory or common law defenses of contributory or comparative fault or negligence that could be asserted by the defendant against the recipient may also be asserted by the defendant in any action by the department or other agency of state government, and if the defenses are supported by the evidence, then recovery may be denied or reduced in the same manner as if the recipient were the plaintiff.

History. Acts 1979, No. 419, § 1; A.S.A. 1947, § 83-171; Acts 1992 (1st Ex. Sess.), No. 54, § 1; 1993, No. 1225, § 1.

CASE NOTES

In General.

This section simply gives the Department of Human Services the right to recover from third parties and provides that the department may enforce those rights by legal proceedings. *Jones v. Balay*, 810 F. Supp. 1031 (W.D. Ark. 1992).

This section gives the Department of Human Services the right to collect what it has paid to a recipient from responsible third parties and, in turn, gives the recipient the right to recover for damages suffered which are not compensated through Medicaid payments. *Jones v. Balay*, 810 F. Supp. 1031 (W.D. Ark. 1992).

The Department of Human Services is not subject to traditional common-law principles of subrogation when it seeks reimbursement for medical benefits under §§ 20-77-301 et seq. and 42 U.S.C. § 1396a(a)25. *Arkansas Dep't of Human Servs. v. Estate of Ferrel*, 336 Ark. 297, 984 S.W.2d 807 (1999).

Cited: *In re Estate of Morgan*, 310 Ark. 220, 833 S.W.2d 776 (1992); *National Bank of Commerce v. Quirk*, 323 Ark. 769, 918 S.W.2d 138 (1996).

20-77-302. Action by recipient alone — Reimbursement of division.

(a) When an action or claim is brought by a medical assistance recipient or his or her legal representative against a third party who may be liable for injury, disease, disability, or death of a medical assistance recipient, any settlement, judgment, or award obtained is subject to the division's claim for reimbursement of the benefits provided to the recipient under the medical assistance program.

(b) In the event of judgment or award in a suit or claim against a third party, if the action or claim is prosecuted by the recipient alone, the court or agency shall first order paid from any judgment or award the reasonable litigation expenses and attorney's fees. After the payment of these expenses and attorney's fees, the court or agency shall order that the Department of Human Services receive an amount sufficient to reimburse the department the full amount of benefits paid on behalf of the recipient under the medical assistance program. The remainder shall be awarded to the medical assistance recipient.

History. Acts 1979, No. 419, § 2; 1981, No. 500, §§ 1, 2; A.S.A. 1947, § 83-171.1; Acts 1987, No. 463, § 1.

RESEARCH REFERENCES

UALR L.J. Survey—Miscellaneous, 10 UALR L.J. 593.

CASE NOTES

ANALYSIS

In general.
Expenses and fees.

In General.

This section and § 20-77-303 are clear and unambiguous. *Jones v. Balay*, 810 F. Supp. 1031 (W.D. Ark. 1992).

The legislature intended to follow the federal mandate that participating states develop a program for collecting benefits paid from responsible third parties. *Jones v. Balay*, 810 F. Supp. 1031 (W.D. Ark. 1992).

This section provides how recovery is to be distributed and divided where the re-

cipient pursues action alone, and § 20-77-303 provides for the division and distribution where action is pursued jointly. *Jones v. Balay*, 810 F. Supp. 1031 (W.D. Ark. 1992).

Expenses and Fees.

Neither this section nor § 20-77-303 require or allow the court to require that the Arkansas Department of Human Services pay, before receiving proceeds to pay its lien, a share of the attorney's fees and costs incurred by plaintiffs in obtaining recovery. *Jones v. Balay*, 810 F. Supp. 1031 (W.D. Ark. 1992).

Cited: *In re Estate of Morgan*, 310 Ark. 220, 833 S.W.2d 776 (1992).

20-77-303. Action by division and recipient.

(a) If an action is prosecuted both by the recipient and the division against a third person who is liable for injury, disease, or disability of the recipient, then in the event of judgment or award in a suit or claim against the third party, the court shall first order paid from any

judgment or award the reasonable litigation expenses incurred in prosecution of the action or claim, together with reasonable attorney's fees based solely on the services rendered for the benefit of the recipient.

(b) After payment of expenses and attorney's fees, the court shall order that the division receive an amount sufficient to reimburse the division the full amount of benefits paid on behalf of the recipient under the medical assistance program.

(c) The remainder shall be awarded to the medical assistance recipient.

History. Acts 1979, No. 419, § 3;
A.S.A. 1947, § 83-171.2.

CASE NOTES

ANALYSIS

In general.

Expenses and fees.

In General.

Section 20-77-302 and this section are clear and unambiguous. *Jones v. Balay*, 810 F. Supp. 1031 (W.D. Ark. 1992).

The legislature intended to follow the federal mandate that participating states develop a program for collecting benefits paid from responsible third parties. *Jones v. Balay*, 810 F. Supp. 1031 (W.D. Ark. 1992).

Section 20-77-302 provides how recovery is to be distributed and divided where the recipient pursues action alone, and this section provides for the division and distribution where action is pursued jointly. *Jones v. Balay*, 810 F. Supp. 1031 (W.D. Ark. 1992).

Expenses and Fees.

Neither § 20-77-302 nor this section require or allow the court to require that the Arkansas Department of Human Services pay, before receiving proceeds to pay its lien, a share of the attorney's fees and costs incurred by plaintiffs in obtaining recovery. *Jones v. Balay*, 810 F. Supp. 1031 (W.D. Ark. 1992).

The legislature obviously intended to make clear that attorney's fees and cost of litigation deducted shall be based solely on the services rendered for the benefit of the recipient and that the Department of Human Services, in effect, pay its costs and attorney's fees in a jointly pursued action and that the recipient do likewise. *Jones v. Balay*, 810 F. Supp. 1031 (W.D. Ark. 1992).

20-77-304. Notice of action or claim — Intervention or consolidation.

(a)(1) If either the medical assistance recipient or the division brings an action or claim against a third person, the recipient or Department of Human Services shall, within thirty (30) days of filing the action, give to the other party written notice of the action or claim by personal service or registered mail.

(2) This notice shall contain the names of the third person and the court in which the action is brought.

(3) Proof of the notice shall be filed in the action.

(4) If an action or claim is brought by either the department or recipient, the other may, at any time before trial on the facts, become a party to the action or shall consolidate his or her action or claim with the other if brought independently.

(b) If the recipient, his or her guardian, personal representative, estate, or survivors bring an action against the third person who may be liable for injury, disease, or disability, then notice of institution of the legal proceedings and notice of settlement shall be given the Director of the Department of Human Services. All notices shall be given by the attorney retained to assert the recipient's claim, or by the recipient, his or her guardian, personal representative, estate, or survivors if no attorney is retained.

History. Acts 1979, No. 419, § 4; A.S.A. 1947, § 83-171.3; Acts 1987, No. 463, § 2.

RESEARCH REFERENCES

UALR L.J. Survey—Miscellaneous, 10
UALR L.J. 593.

CASE NOTES

ANALYSIS

In general.
Derivative claims.
Notice.

In General.

This section imposes certain obligations and duties if either the department or the recipient pursues a claim against a third person. *Jones v. Balay*, 810 F. Supp. 1031 (W.D. Ark. 1992).

Derivative Claims.

Trial court erred in denying Arkansas Department of Human Services' motion for intervention, as its claims were clearly

not derivative of the claims of the parents. *National Bank of Commerce v. Quirk*, 323 Ark. 769, 918 S.W.2d 138 (1996).

Notice.

The clear intention of this section is to give both the Department of Human Services and the recipient of Medicaid benefits separate rights to pursue claims against liable third parties; each must notify the other that it is doing so, but the action may be pursued either by the recipient alone or by the recipient and the department acting jointly. *Jones v. Balay*, 810 F. Supp. 1031 (W.D. Ark. 1992).

20-77-305. Notice to Department of Human Services of award or settlement by recipient required.

(a) No judgment, award, or settlement in any action or claim by a medical assistance recipient to recover damages for injuries, disease, or disability, in which the Department of Human Services has an interest, shall be satisfied without first giving the department notice and a reasonable opportunity to establish its interest.

(b) If a recipient, his or her guardian, attorney, or personal representative disposes of the funds that are to be held for the benefit of the department under this section without the written approval of the department, that person shall be liable to the department for any amount that, as a result of the disposition of the funds, is not recoverable by the department.

History. Acts 1979, No. 419, § 5; 1981, No. 500, § 3; A.S.A. 1947, § 83-171.4; Acts 1987, No. 463, § 3.

RESEARCH REFERENCES

UALR L.J. Survey—Miscellaneous, 10 UALR L.J. 593.

20-77-306. Liability of third parties to Department of Human Services.

All parties who were legally liable for any or part of any medical cost of an injury, disease, disability, or condition requiring medical treatment for which the Medicaid program, established by § 20-77-102 has paid, or has assumed liability to pay, shall be liable to the Department of Human Services for the amount of their liability to the extent that the department has paid or agreed to pay.

History. Acts 1981, No. 500, § 4; A.S.A. 1947, § 83-171.5; Acts 1987, No. 463, § 4.

RESEARCH REFERENCES

UALR L.J. Survey—Miscellaneous, 10 UALR L.J. 593.

CASE NOTES

Cited: National Bank of Commerce v. Quirk, 323 Ark. 769, 918 S.W.2d 138 (1996).

20-77-307. Assignment to Department of Human Services of rights of recovery.

(a) As a condition of eligibility, every Medicaid applicant shall automatically assign his or her right to any settlement, judgment, or award which may be obtained against any third party to the Department of Human Services to the full extent of any amount which may be paid by Medicaid for the benefit of the applicant.

(b) The application for Medicaid benefits shall, in itself, constitute an assignment by operation of law.

(c) The assignment shall be considered a statutory lien on any settlement, judgment, or award received by the recipient from a third party.

(d) Every Medicaid applicant, as a condition of eligibility, shall cooperate in establishing paternity, except for good cause shown, for a child born out of wedlock for whom the recipient can legally assign rights, in obtaining medical care, support, and payments for himself or herself or any other person for whom the individual can legally assign

rights, and in identifying and providing information to assist the department and the Office of Child Support Enforcement in pursuing any liable third party.

History. Acts 1981, No. 500, § 5; A.S.A. 1947, § 83-171.6; Acts 1987, No. 463, § 5; 1993, No. 1242, § 7.

Publisher's Notes. Acts 1993, No. 957, § 4 transferred the Child Support Enforcement Unit from the Division of

Economic and Medical Services of the Department of Human Services to the Department of Finance and Administration — Revenue Division and renamed it the Office of Child Support Enforcement.

RESEARCH REFERENCES

UALR L.J. Survey—Miscellaneous, 10 UALR L.J. 593.

CASE NOTES

Cited: National Bank of Commerce v. Quirk, 323 Ark. 769, 918 S.W.2d 138 (1996).

20-77-308. Release of information to Department of Human Services.

All recipients of medical assistance under the Medicaid program shall be deemed to have authorized all third parties including, but not limited to, insurance companies and providers of medical care to release to the Department of Human Services information needed by the department to secure or enforce its rights as assignee under § 20-77-306.

History. Acts 1981, No. 500, § 6; A.S.A. 1947, § 83-171.7; Acts 1987, No. 463, § 6.

RESEARCH REFERENCES

UALR L.J. Survey—Miscellaneous, 10 UALR L.J. 593.

20-77-309. Denial or reduction of benefits — Insurance policies.

No policy of accident or illness insurance issued or renewed after July 1, 1981, shall contain any provision denying or reducing benefits because services are rendered to an insured or dependent who is eligible for medical assistance under the Arkansas Medicaid program.

History. Acts 1981, No. 500, § 7; A.S.A. 1947, § 83-171.8.

20-77-310. Denial or reduction of benefits — Service plan corporation contracts.

After July 1, 1981, no service plan corporation shall deliver, issue for delivery, or renew any subscriber's contract which contains any provision denying or reducing benefits because services are rendered to a subscriber or dependent who is eligible for medical assistance under the Arkansas Medicaid program.

History. Acts 1981, No. 500, § 8;
A.S.A. 1947, § 83-171.9.

20-77-311. Denial or reduction of benefits — Health care providers.

After July 1, 1981, no association authorized to do business in this state which provides or pays for any health care benefits shall issue any certificate which contains any provision denying or reducing benefits because services are rendered to a certificate holder or beneficiary who is eligible for medical assistance under the Arkansas Medicaid program.

History. Acts 1981, No. 500, § 9;
A.S.A. 1947, § 83-171.10.

20-77-312. Denial or reduction of benefits — Provisions not applicable to Medicaid.

General exclusion or reduction provisions relating to benefits paid by or eligibility under governmental programs, whether state or federal, shall not be construed to apply to the Medicaid program.

History. Acts 1981, No. 500, § 10;
A.S.A. 1947, § 83-171.11.

20-77-313. Billing statements.

Billing statements forwarded to recipients of medical assistance by vendors of medical care shall clearly state that reimbursement from the Medicaid program is contemplated.

History. Acts 1981, No. 500, § 11;
A.S.A. 1947, § 83-171.12.

SUBCHAPTER 4 — PRESCRIPTION DRUGS**SECTION.**

20-77-401. Purpose.

20-77-402. Continuation of program.

20-77-403. Fees paid to participating pharmacists.

SECTION.

20-77-404. Approval from Department of Health and Human Services.

20-77-405. Preference for generic drugs.

Effective Dates. Acts 1983, No. 518, § 8: Mar. 17, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that it is essential to provide continued coverage of prescription drugs under the Title XIX Program in Arkansas; that this Act is designed to accomplish this purpose and

should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from its passage and approval."

20-77-401. Purpose.

The purpose of this subchapter is to allow for the continued operation of a prescription drug program as a portion of the Title XIX Medicaid Program for the State of Arkansas.

History. Acts 1983, No. 518, § 1; section is codified in 42 U.S.C. § 1396 et seq.
A.S.A. 1947, § 83-174.

U.S. Code. Title XIX referred to in this

20-77-402. Continuation of program.

(a) The Director of the Department of Human Services and the deputy director of the appropriate division of the Department of Human Services are authorized to provide for continued coverage of prescription drugs under the Title XIX Medicaid Program for the State of Arkansas.

(b) The director and deputy director are authorized to establish necessary program guidelines to control the provision of this service provided that the guidelines are not in conflict with any federal or state law or regulation.

History. Acts 1983, No. 518, § 2; section is codified in 42 U.S.C. § 1396 et seq.
A.S.A. 1947, § 83-174.1.

U.S. Code. Title XIX referred to in this

20-77-403. Fees paid to participating pharmacists.

(a) The Director of the Department of Human Services and the deputy director shall pay each participating pharmacist for each prescription filled under this program the pharmacist's usual and customary charge to the general public for the drug.

(b) However, until existing federal regulations limiting reimbursement for a drug to the lower of the pharmacist's usual and customary charge, or cost of the drug plus a reasonable dispensing fee, are modified or declared invalid by a court, the director and the deputy director shall pay for each prescription, the lower of:

(1) The pharmacist's usual and customary charge to the general public for the drug; or

(2) The pharmacist's cost of the drug plus a dispensing fee. The fee will be adjusted annually on July 1 of each year by the percentage change in the Consumer Price Index, except that on any July 1

immediately following a subsequent cost of dispensing survey conducted by the appropriate division of the Department of Human Services, the fee will be adjusted using the formula used by the director and the deputy director to determine the July 1, 1980, fee or other such formula as may be developed subsequently by the director and the deputy director with the approval of the Legislative Council.

(c) In addition to the amounts paid under subdivisions (b)(1) and (2) of this section, at such time as federal regulations shall permit, the pharmacist will also be paid any additional direct and indirect costs which are generated by participation in the title XIX Medicaid Program. The new additional costs will be paid by the state.

History. Acts 1983, No. 518, § 3; A.S.A. 1947, § 83-174.2.

A.C.R.C. Notes. Acts 2001, No. 1638, § 17, provided: "MEDICAL SERVICES — PHARMACEUTICAL DISPENSING FEE SURVEY. No more than two years prior to making any changes to the current pharmaceutical dispensing fee, the State shall conduct an independent survey utilizing generally accepted accounting principles, to determine the cost of dispensing a prescription by pharmacists in Arkansas. Only factors relative to the cost of dispensing shall be surveyed. These factors shall not include actual acquisition costs or average profit or any combination of actual acquisition costs or average profit. The

survey results shall be the basis for establishing the dispensing fee paid to participating pharmacies in the Medicaid prescription drug program in accordance with Federal requirements. The dispensing fee shall be no lower than the cost of dispensing as determined by the survey. Nothing in this section shall be construed to prohibit the State from increasing the dispensing fee at any time.

"The provisions of this section shall be in effect only from July 1, 2001 through June 30, 2003."

U.S. Code. Title XIX referred to in this section is codified in 42 U.S.C. § 1396 et seq.

20-77-404. Approval from Department of Health and Human Services.

(a) The Director of the Department of Human Services and the deputy director are directed to seek approval by the United States Department of Health and Human Services of the provisions of this subchapter so as to qualify this program for maximum contributions from United States Department of Health and Human Services under its regulations until those regulations are declared invalid or modified.

(b) If, and to the extent that, United States Department of Health and Human Services hereafter makes any valid rule that any provision of this subchapter disqualifies this program for the maximum contribution, the director and the deputy director are directed to comply with any ruling to the extent necessary to qualify for the maximum contribution.

History. Acts 1983, No. 518, § 4; A.S.A. 1947, § 83-174.3.

20-77-405. Preference for generic drugs.

Drugs dispensed under the Medicaid program provided for in this subchapter shall, so far as possible, be prescribed and dispensed as generic drugs.

History. Acts 1983, No. 518, § 5;
A.S.A. 1947, § 83-174.4.

SUBCHAPTER 5 — EYE CARE

SECTION.

- 20-77-501. Definition.
- 20-77-502. Applicability.
- 20-77-503. Practice of optometry not affected.
- 20-77-504. Penalty.
- 20-77-505. Injunctions.

SECTION.

- 20-77-506. Right of freedom of choice.
- 20-77-507. List of ocular practitioners.
- 20-77-508. Recommendation of individual practitioner unlawful and nuisance.

Effective Dates. Acts 1973, No. 10, § 11: Jan. 26, 1973. Emergency clause provided: "It is hereby found and determined by the General Assembly that it is not in the best interest of the citizens of this State that persons be directed to a particular ocular practitioner for eye examination or treatment where such examination or treatment is to be paid for in

whole or in part from public funds, and that such practice should be stopped immediately. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the immediate preservation of the public peace, health and safety, shall be in effect from the date of its passage and approval."

20-77-501. Definition.

For the purpose of this subchapter, unless the context otherwise requires, the term "ocular practitioner" shall include all persons licensed under the Arkansas Medical Practices Act, § 17-95-201 et seq., and all persons licensed under the Arkansas Optometry Practices Act, § 17-90-101 et seq., and none other.

History. Acts 1973, No. 10, § 3; A.S.A. 1947, § 83-1003.

Publisher's Notes. The reference to the code section in Title 17 has been

updated to reflect the 1995 realphabetization of the chapters in that title.

20-77-502. Applicability.

(a) Nothing in this subchapter shall apply to any person who personally takes, carries, or transports a person with an injured or cut eye due to a current accidental injury or current trauma to any physician or surgeon licensed under the Arkansas Medical Practices Act, § 17-95-201 et seq., in an emergency, or personally calls any physician or surgeon on behalf of that person in an emergency.

(b) Nothing in this subchapter shall apply to any person licensed under the Arkansas Medical Practices Act, § 17-95-201 et seq., or the Arkansas Optometry Practices Act, § 17-90-101 et seq., when that person is engaged in the practice of medicine as defined in § 17-95-202 or engaged in the practice of optometry as defined in § 17-90-101.

History. Acts 1973, No. 10, §§ 7, 8; updated to reflect the 1995 A.S.A. 1947, §§ 83-1007, 83-1008. realphabetization of the chapters in that title.

Publisher's Notes. The reference to the code section in Title 17 has been

20-77-503. Practice of optometry not affected.

Nothing in this subchapter shall be construed to enlarge or diminish the practice of optometry as defined by law in § 17-90-101.

History. Acts 1973, No. 10, § 9; A.S.A. updated to reflect the 1995 1947, § 83-1009. realphabetization of the chapters in that title.

Publisher's Notes. The reference to the code section in Title 17 has been

20-77-504. Penalty.

(a) Any person violating this subchapter shall be guilty of a misdemeanor and upon conviction shall be fined in any sum not less than ten dollars (\$10.00) nor more than twenty-five dollars (\$25.00).

(b) Each violation shall constitute a separate offense and shall be punishable as such.

History. Acts 1973, No. 10, § 5; A.S.A. 1947, § 83-1005.

20-77-505. Injunctions.

(a) The circuit courts of this state having general equity jurisdiction are vested with jurisdiction and power to enjoin any violation of this subchapter by complaint by any resident or state board of this state in the county in which the alleged violation of this subchapter occurred, in the county where the plaintiff resides, in which the defendant resides or, if there is more than one (1) defendant, in the county in which any defendant resides.

(b) The issuance of an injunction shall not relieve a person from criminal prosecution for violation of the provisions of this subchapter, but the remedy of injunction shall be in addition to liability to criminal prosecution, it being the intention to provide a speedy remedy against violations in the interest of public health.

History. Acts 1973, No. 10, § 6; A.S.A. cuit courts, Ark. Const. Amend. 80, §§ 6, 1947, § 83-1006.

Cross References. Jurisdiction of cir-

20-77-506. Right of freedom of choice.

Every person eligible for an eye examination the payment for which shall or may be made out of public money is guaranteed his or her freedom of choice between persons licensed under the Arkansas Optometry Practices Act, § 17-90-101 et seq., and persons licensed under the Arkansas Medical Practices Act, § 17-95-201 et seq., or either of the persons.

History. Acts 1973, No. 10, § 1; A.S.A. 1947, § 83-1001.

Publisher's Notes. The reference to the code section in Title 17 has been updated to reflect the 1995

realphabetization of the chapters in that title.

Cross References. Eye examinations for needy blind, § 20-76-419.

20-77-507. List of ocular practitioners.

(a) When expending public money for any purpose involving human eye examinations or the care of vision or examinations for the correction or relief of any visual or muscular anomaly of the eye, any state board, agency, commission, department, or political subdivision, or any employee or member thereof, created or existing under the Constitution or by act of the General Assembly, including public schools or other state agencies and their employees or any governmental employees who, in the performance of duty, are responsible for such expenditures, when informing a person eligible for an eye examination or a vision examination or for an examination for the correction of any visual or muscular anomaly of the eye, shall under no circumstances give, tell, or inform the eligible person by direct or indirect reference or suggestion, the name, address, or classification of any ocular practitioner, except that the eligible person shall be furnished one (1) printed list only of all ocular practitioners, with the office address of each, practicing within the State of Arkansas.

(b) The list shall be broken down by counties and shall list ocular practitioners in alphabetical order by county and shall show the county in which the ocular practitioner designates that he or she maintains his or her principal office.

(c) The name of the ocular practitioner shall appear only once on the list and shall show only his or her name, principal office address, and the classification or designation M.D. or O.D. or D.O., as the case may be, after each name and nothing else.

(d)(1) It shall be the duty of the Department of Human Services or its successors to prepare and revise the list from time to time but not less often than each six (6) months.

(2) The revised list shall be filed with the Secretary of State on March 31 and September 30 of each year.

(3) No public employee shall furnish any list or inform any person who is eligible for public money by direct or indirect reference or suggestion the name, address, or classification of any ocular practitioner until the list is on file with the Secretary of State and then only in accordance with the provisions of this subchapter.

(e) The list shall show only the names of those ocular practitioners who request the department to place his or her name upon the list. Once the name of the ocular practitioner is upon this list, no further request from the ocular practitioner shall be necessary. The name of any ocular practitioner shall be removed from the list upon his or her written request to the department.

(f) The eligible person shall be free to choose any ocular practitioner from the list regardless of the person's place of residence or the location of the office of the ocular practitioner.

History. Acts 1973, No. 10, § 2; A.S.A. 1947, § 83-1002.

20-77-508. Recommendation of individual practitioner unlawful and nuisance.

The recommendation or naming of any particular ocular practitioner or group of ocular practitioners, professional association or firm, corporation, or association by any state employee or member of any state board, commission, department, political subdivision, or public school employee engaged in the expenditure of public money for eye examinations or vision examinations is declared to be an unlawful act and a public nuisance.

History. Acts 1973, No. 10, § 4; A.S.A. 1947, § 83-1004.

SUBCHAPTER 6 — UNINSURED CHILDREN'S PROGRAM

SECTION.

20-77-601 — 20-77-607. [Repealed.]

20-77-601 — 20-77-607. [Repealed.]

Publisher's Notes. This subchapter, concerning an uninsured children's program, was repealed by Acts 1997, No. 407, § 5. The subchapter was derived from the following sources:

20-77-601. Acts 1989, No. 471, § 1.

20-77-602. Acts 1989, No. 471, § 2.

20-77-603. Acts 1989, No. 471, § 3.

20-77-604. Acts 1989, No. 471, § 4.

20-77-605. Acts 1989, No. 471, § 6.

20-77-606. Acts 1989, No. 471, § 5.

20-77-607. Acts 1989, No. 471, § 7.

As to the ARKids First Program, see

§ 20-77-1101 et seq.

SUBCHAPTER 7 — SPECIAL NEEDS TRUST REVOLVING FUND

SECTION.

20-77-701. Legislative intent.

20-77-702. Definitions.

20-77-703. Creation of Special Needs Trust Revolving Fund.

20-77-704. Payment of trust funds.

SECTION.

20-77-705. Conditions for benefits — Changes in benefits.

20-77-706. Waiver of physician-patient privilege — Examinations and reports.

SECTION.

20-77-707. Application forms — Cooperation by applicant.

20-77-708. Confidential information.

20-77-709. Powers of Cotrustees of the Special Needs Trust Re-

SECTION.

volving Fund — Logistical support.

20-77-710. Annual report of Cotrustees of the Special Needs Trust Revolving Fund.

Effective Dates. Acts 1993, No. 1228, § 5: Apr. 20, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the Medicaid eligibility laws of this state are in immediate need of amendment to comply with federal requirements and assure that otherwise ineligible individuals are prevented from artificially impoverishing themselves to receive benefits to which they are not

otherwise entitled and to facilitate recovery of improperly obtained benefits and assure the fiscal integrity of the funds appropriated for Medicaid and this Act is necessary to accomplish that purpose. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

20-77-701. Legislative intent.

It is the intent of the General Assembly to provide a method of assisting those persons within the state who as a result of personal injury, disability, or other medical condition are in need of supplemental benefits to improve or maintain reasonable quality-of-life standards. To this end, it is the further intent of the General Assembly to provide benefits in the amount of expenses actually incurred to satisfy those special needs. Furthermore, the cotrustees of the Special Needs Trust Revolving Fund shall have, in addition to those powers and duties set forth in this subchapter, all powers and duties authorized, imposed, or conferred by law upon cotrustees of the fund.

History. Acts 1993, No. 1228, § 1.

20-77-702. Definitions.

As used in this subchapter:

(1) "Allowable expense" means charges incurred for needed products, services, and accommodations, including, but not limited to, medical care, rehabilitation, rehabilitative occupational training, and other remedial treatment and care;

(2) "Beneficiary" means a natural person who has sustained injury, is wholly or partially disabled or suffers from medical conditions, and is dependent for care or support;

(3) "Claimant" means any of the following persons applying for reparations under this subchapter:

(A) A beneficiary;

(B) A dependent of a beneficiary; and

(C) A person authorized to act on behalf of any of the persons enumerated in subdivisions (6)(A) and (B) of this section;

(4) "Collateral source" means a source of benefits or advantages for

economic loss for which the claimant would otherwise be eligible to receive under this subchapter which the claimant has received, or which is readily available to the claimant, from any one (1) or more of the following:

- (A) State required temporary nonoccupational disability insurance;
 - (B) Workers' compensation;
 - (C) Wage continuation programs of any employer;
 - (D) Proceeds of a contract of insurance payable to the claimant for loss which the beneficiary sustained; or
 - (E) A contract providing services or benefits for disability; and
- (5) "Contributing beneficiary" means a beneficiary who has contributed funds to the Special Needs Trust Revolving Fund;
- (6) "Cotrustees of the Special Needs Trust Revolving Fund" shall mean:

(A) The Department of Human Services created by § 25-10-101 et seq.; and

(B) A federally insured bank, savings bank, or safe deposit or trust company authorized by law to do business as such, which shall be selected by the department. The department shall have the authority to choose a new cotrustee under this subdivision at its discretion;

(7) "Economic loss" means monetary detriment consisting only of allowable expense and replacement services loss;

(8) "Grantor" means the individual, institution, or entity that established, created, or funded the trust and shall also include fiduciaries as defined by § 28-69-201 and third parties as contemplated by § 20-77-301 et seq.;

(9) "Noneconomic detriment" means inconvenience, physical impairment, and nonpecuniary damage;

(10) "Replacement services loss" means expenses reasonably incurred in obtaining ordinary and necessary services; and

(11) "Trust" means a trust, or similar legal device, established other than by will by an individual or an individual's spouse under which the individual may be a beneficiary of all or part of the payments from the trust, and the distribution of such payments is determined by one (1) or more trustees or other fiduciaries who are permitted to exercise any discretion with respect to the distribution to the individual. The term "trust" shall include trusts, conservatorships, and estates created pursuant to the administration of a guardianship.

History. Acts 1993, No. 1228, § 1.

20-77-703. Creation of Special Needs Trust Revolving Fund.

(a) There is created in the State Treasury a revolving fund to be designated the Special Needs Trust Revolving Fund. The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of:

(1) All moneys received from those individuals who desire to establish or maintain eligibility for benefits under the medical assistance program but who possess income or resources, including funds recovered from third parties, in excess of the established federal eligibility requirements, and the consideration for divestiture of income and resources shall be presumed to be for adequate and fair compensation; and

(2) All moneys received by the Cotrustees of the Special Needs Trust Revolving Fund from any other source, including moneys received from any state, federal, or private source.

(b) All interest earned as a result of investing moneys in the fund shall be paid into the fund and not into the general revenues of this state. All moneys accruing to the credit of the fund are appropriated and may be budgeted and expended by cotrustees for the purpose of implementing the provisions of this subchapter. If the cotrustees do not agree about the payment of any benefit or benefits, the determination of the Department of Human Services shall be binding.

History. Acts 1993, No. 1228, § 1.

20-77-704. Payment of trust funds.

(a) The Cotrustees of the Special Needs Trust Revolving Fund are hereby given complete discretion as to the expenditure of principal and income of the Special Needs Trust Revolving Fund for the purposes set forth in this subchapter, not to exceed all of the income earned by the fund annually and no more than ten percent (10%) of the principal of the fund. All income not expended annually shall become a part of and be added to the principal of the fund. The expenditures from the fund shall be subject to § 20-77-705 and shall have the following priorities:

(1) Each claimant who is also a contributing beneficiary shall be deemed to have priority as to distribution of his or her share of the principal and the income earned by his or her share of the fund; and

(2) Any of the share of principal or income of the contributing beneficiary not expended for the contributing beneficiary plus all expenditure of principal and income as allowed above which are not designated for any contributing beneficiary may be expended for any other claimant.

(b)(1) The cotrustees shall keep a current account balance for each contributing beneficiary's fund, with the balance to be reduced by all expenditures for that contributing beneficiary whether out of the fund or from any collateral source until the balance reaches zero dollars (\$0.00).

(2) Should the contributing beneficiary die prior to his or her balance reaching zero dollars (\$0.00), the balance shall be paid to the estate of the deceased contributing beneficiary.

(c) When a contributing beneficiary's account balance as described in subsection (b) of this section reaches zero dollars (\$0.00), the contributing beneficiary shall be treated as any other claimant for purposes of

receiving benefits from this fund. In addition to the annual accounting as required by § 20-77-108, the cotrustees shall notify a contributing beneficiary when his or her account balance reaches zero dollars (\$0.00).

(d) A benefit shall not be subject to execution, attachment, garnishment, or other process, except that benefits for allowable expenses shall not be exempt from a creditor to the extent that the creditor has provided products, services, or accommodations, the costs of which are included in the benefit.

(e) An assignment by the claimant to any future benefit under the provisions of this subchapter is unenforceable except an assignment of any benefit for allowable expense to the extent that the benefits are for the cost of products, services, or accommodations necessitated by the injury or disability on which the claim is based and are provided or are to be provided by the assignee.

History. Acts 1993, No. 1228, § 1.

20-77-705. Conditions for benefits — Changes in benefits.

(a) Benefits shall not be awarded:

(1) Unless the claim has been filed with the Cotrustees of the Special Needs Trust Revolving Fund after the injury, disability, or medical condition exists; or

(2) If any governmental entitlement or insurance program provides comparable benefits to persons eligible to participate in those programs.

(b) Benefits otherwise payable to a beneficiary shall be diminished to the extent that the economic loss is recouped from collateral sources and retained by the beneficiary or claimant.

(c) In determining eligibility for benefits from the Special Needs Trust Revolving Fund, the cotrustees shall apply the same eligibility standards as those then in effect for assistance under the state medical assistance program.

(d) In the event that the fund results in a contributing beneficiary being declared ineligible for state medical assistance payments, the contributing beneficiary may elect:

(1) To take no action;

(2) To withdraw from the fund, whereupon the contributing beneficiary shall be entitled to the unexpended portion of his or her contribution; or

(3) To continue to participate in the fund and be eligible for benefits from the fund, but to relinquish any other interest in the fund, including any right the contributing beneficiary or the contributing beneficiary's estate may have had to any unexpended portion of the beneficiary's contribution. Any such relinquishment shall be deemed to have been made for adequate consideration.

History. Acts 1993, No. 1228, § 1.

20-77-706. Waiver of physician-patient privilege — Examinations and reports.

(a) Any person filing a claim under the provisions of this subchapter shall be deemed to have waived any physician-patient privilege as to communications or records relevant to an issue of the physical, mental, or emotional conditions of the claimant.

(b) If the mental, physical, or emotional condition of a claimant is material to a claim, upon good cause shown, the Cotrustees of the Special Needs Trust Revolving Fund may order the claimant to submit to a mental or physical examination. The order shall specify the time, place, manner, conditions, and scope of the examination and the person by whom it is to be made. The order shall also require the person to file a detailed written report of the examination with the cotrustees. The report shall set out the findings of the person making the report, including results of all tests made, diagnoses, prognoses, and other conclusions and reports of earlier examinations of the same conditions.

(c) The cotrustees shall furnish to the beneficiary a copy of any reports examined.

(d) The cotrustees may require the claimant to supply any additional medical or psychological reports available relating to the injury or death for which reparations are claimed.

History. Acts 1993, No. 1228, § 1.

20-77-707. Application forms — Cooperation by applicant.

Each local office of the Department of Human Services shall keep application forms prepared and provided by the Cotrustees of the Special Needs Trust Revolving Fund and make them available to any person upon request.

History. Acts 1993, No. 1228, § 1.

20-77-708. Confidential information.

The following information, when submitted to the Cotrustees of the Special Needs Trust Revolving Fund as part of an application, shall be confidential:

(1) Documents submitted by a claimant which relate to medical treatment; and

(2) Investigative reports, if confidential under any other law.

History. Acts 1993, No. 1228, § 1.

20-77-709. Powers of Cotrustees of the Special Needs Trust Revolving Fund — Logistical support.

(a)(1)(A) The Cotrustees of the Special Needs Trust Revolving Fund shall have the power to award benefits if satisfied by a preponderance of the evidence that the requirements for benefits have been met.

(B) The cotrustees shall have authority to award the benefits either to the claimant or directly to the provider of services.

(2) The cotrustees shall hear and determine all matters relating to claims for benefits, including the power to reopen claims without regard to statutes of limitation.

(3) The cotrustees shall have the power to subpoena witnesses, compel their attendance, require the production of records and other evidence, administer oaths or affirmations, conduct hearings, and receive relevant information regarding any claim.

(4) The cotrustees shall be provided such office, support staff, and secretarial services as are deemed necessary, and the reasonable costs of administration of the trust shall be borne by the trust.

(b) In addition to any other powers and duties specified elsewhere in this subchapter, the cotrustees may:

(1) Regulate the fund's own procedure except as otherwise provided in this subchapter;

(2) Adopt rules and regulations to implement the provisions of this subchapter;

(3) Define any term not defined in this subchapter;

(4) Prescribe forms necessary to carry out the purposes of this subchapter;

(5) Request access to any reports of investigations or other data necessary to assist the cotrustees in making a determination of eligibility for benefits under the provisions of this subchapter;

(6) Take notice of general, technical, and scientific facts within its specialized knowledge; and

(7) Publicize the availability of benefits and information regarding the filing of claims therefor.

History. Acts 1993, No. 1228, § 1.

20-77-710. Annual report of Cotrustees of the Special Needs Trust Revolving Fund.

The Cotrustees of the Special Needs Trust Revolving Fund shall prepare and transmit annually a report of its activities to the Director of the Department of Human Services. This report shall include the amount of benefits paid and a statistical summary of claims and benefits made and denied.

History. Acts 1993, No. 1228, § 1.

SUBCHAPTER 8 — HOME INTRAVENOUS DRUG THERAPY SERVICES

- SECTION.
20-77-801. Definitions.
20-77-802. Medicaid payment.
20-77-803. Physician clinical management fees.

- SECTION.
20-77-804. Limitation on acceptance of and payments for certain referrals.
20-77-805. Administration of medication.

SECTION.

20-77-806. Sales and delivery.

20-77-807. Sanctions.

SECTION.

20-77-808. Exclusion.

Effective Dates. Acts 1993, No. 918, § 11: Apr. 7, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that the medicaid program is suffering severe financial strain; that this act would provide substantial relief to medicaid expenditures through authorizing home intravenous drug therapy services; and this act should

go into effect immediately in order to grant needed relief to the medicaid program. Therefore and emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

20-77-801. Definitions.

(1)(A) "Home intravenous drug therapy services" means the items and services described in subdivision (1)(B) of this section furnished to an individual who is under the care of a physician in a place of residence used as the individual's home, by a qualified home intravenous drug therapy provider, and under a plan established and periodically reviewed by a physician.

(B) "Home intravenous drug therapy services" includes pharmacy and related services, including medical supplies, intravenous fluids, and equipment used in administering intravenous fluids as are necessary to conduct safely and effectively an intravenous-administered drug regimen;

(2) "Qualified pharmacy home intravenous drug therapy provider" means any entity that the Arkansas State Board of Pharmacy determines meets the following requirements:

(A) Is capable of providing home intravenous drug therapy services;

(B) Makes services available, as needed, seven (7) days a week on a twenty-four-hour basis;

(C) Adheres to the appropriate written protocols and policies with respect to the provision of items and services;

(D) Maintains clinical records on all patients;

(E) Coordinates all services with the patient's physician;

(F) Maintains patient records as to frequency of nursing visits, certificate of medical necessity from the attending physician, progress reports on the patient, and a patient care plan;

(G) Conducts a quality assessment and assurance program, including drug regimen review and coordination of patient care;

(H) Provides sterile compounding of intravenous drugs in an atmosphere which contains less than one thousand (1,000) particles 0.5 microns or larger in diameter per cubic foot of air and positive air flow. Clean air hoods must be certified at least annually;

(I) Performs stringent quality control procedures, including complete sterile compounding records of drug lot number, expiration date,

quantity used, and a copy of the label attached to the final compounded product;

(J) Is licensed by the board; and

(K) Meets such other requirements as the board may determine are necessary to assure the safe and effective provision of home intravenous drug therapy services and the efficient administration of home intravenous drug therapy; and

(3) "Referring physician" means, with respect to providing home intravenous drug therapy services to an individual, a physician who:

(A) Prescribed the home intravenous drug for which the services are to be provided; and

(B) Established the plan of care for the services.

History. Acts 1993, No. 918, § 1.

20-77-802. Medicaid payment.

(a) The Medicaid payment shall not exceed an amount equal to the lesser of the qualified provider's usual and customary charges for such services or the reimbursement schedule established under subsection (b) of this section when determined medically necessary by the Arkansas Medicaid Program.

(b)(1) The Department of Human Services shall establish a reimbursement schedule for the following:

(A) Home intravenous antibiotics;

(B) Chemotherapy;

(C) Pain management;

(D) Total parenteral nutrition; and

(E) Other home intravenous therapies.

(2) A reimbursement schedule established under this section shall be on a per diem basis.

(3) Service per diem rates shall include the following:

(A) Pharmacy sterile compounding fees;

(B) Intravenous pole, infusion pumps, and pump cassettes;

(C) All required intravenous supplies such as syringes, tubing, catheter care kits, etc.; and

(D) Other related services necessary for home intravenous drug services.

(4) The Medicaid reimbursement shall be the average wholesale cost of drug and solution plus a service per diem not to exceed the fortieth percentile of average daily Medicaid per diem to Arkansas hospitals, or the usual and customary reimbursement, whichever is lower.

(c) Reimbursement under this section shall not be subject to the Medicaid pharmacy benefits limits.

History. Acts 1993, No. 918, § 2.

20-77-803. Physician clinical management fees.

(a) The referring physician prescribing the home intravenous therapy shall be entitled to Medicaid payment for certain clinical management services determined by the Department of Human Services.

(b) The schedule of physicians' fees for these services shall not exceed on a per diem basis the fortieth (40th) percentile of average Medicaid fees paid to physicians for Arkansas hospital visits, or the usual and customary reimbursement, whichever is lower.

History. Acts 1993, No. 918, § 3.

20-77-804. Limitation on acceptance of and payments for certain referrals.

(a) Except as provided in subsection (b) of this section, no payment for home intravenous drug therapy services shall be made to any provider in which a physician or a physician's immediate family member has an ownership interest in the provider or in any situation where the physician receives compensation from the provider to induce referrals.

(b) Exceptions:

(1) Subsection (a) does not apply if the ownership interest is the ownership of stock which is traded over a publicly regulated exchange and was purchased on terms generally available to the public.

(2) Subsection (a) does not apply if the compensation is reasonably related to items or services actually provided by the physician and does not vary in proportion to the number of referrals made by the referring physicians, but such exception does not apply to compensation provided for direct patient care services.

(3) Subsection (a) is not to be construed to apply to a referring physician whose only ownership or financial relationship with the provider is as an uncompensated officer or director of the provider.

History. Acts 1993, No. 918, § 4.

20-77-805. Administration of medication.

When the home intravenous drug therapy medication must be administered by a licensed health care professional, the administration of this medication shall be provided by a licensed home health agency.

History. Acts 1993, No. 918, § 2.

20-77-806. Sales and delivery.

No person or entity shall sell intravenous drugs in this state or deliver the same into this state through the United States mail or a private carrier unless licensed by the Arkansas State Board of Pharmacy.

History. Acts 1993, No. 918, § 6.

20-77-807. Sanctions.

No payment may be made under this subchapter for home intravenous drug therapy service which is provided in violation of this subchapter or which jeopardizes federal financial participation.

History. Acts 1993, No. 918, § 5.

20-77-808. Exclusion.

The provisions of this subchapter shall not be deemed to grant the Arkansas State Board of Pharmacy any authority to regulate the practice of nursing in this state, and the practicing of nursing in this state shall remain the sole responsibility of the Arkansas State Board of Nursing pursuant to the Nurse Practices Act, § 17-87-101 et seq.

History. Acts 1993, No. 918, § 7.

Publisher's Notes. The reference to the code section in Title 17 has been

updated to reflect the 1995 realphabetization of the chapters in that title.

SUBCHAPTER 9 — MEDICAID FRAUD FALSE CLAIMS ACT

SECTION.

20-77-901. Definitions.

20-77-902. Liability for certain acts.

20-77-903. Civil penalties.

20-77-904. Investigation by Attorney General.

20-77-905. Order compelling testimony or production of evidence — Immunity — Contempt.

20-77-906. Evidence — Disclosure.

SECTION.

20-77-907. Records.

20-77-908. False claims jurisdiction — Procedure.

20-77-909. Injunctions against fraud.

20-77-910. Suspension of violators.

20-77-911. Reward for the detection and punishment of Medicaid fraud.

Effective Dates. Acts 1993, No. 1299, § 16: Apr. 23, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Attorney General and the prosecuting attorneys are in need of specific legislation by which to eliminate fraud in the Arkansas Medicaid Program and that immediate passage of this act is necessary to protect the integrity of the program. Therefore, an emergency is hereby declared to exist, and this act, being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 1210, § 5: Apr. 11, 1995. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the laws of Arkansas need to be strengthened in order to combat fraud in the Arkansas Medicaid program and that this act is necessary to protect the integrity of the Medicaid program. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

20-77-901. Definitions.

(1) "Arkansas Medicaid program" means the program authorized under Title XIX of the federal Social Security Act, which provides for payments for medical goods or services on behalf of indigent families with dependent children and of aged, blind, or disabled individuals whose income and resources are insufficient to meet the cost of necessary medical services;

(2) "Claim" includes any request or demand, including any and all documents or information required by federal or state law or by rule, made against medical assistance programs funds for payment. A claim may be based on costs or projected costs and includes any entry or omission in a cost report or similar document, book of account, or any other document which supports, or attempts to support, the claim. A claim may be made through electronic means if authorized by the department. Each claim may be treated as a separate claim, or several claims may be combined to form one claim.

(3) "Fiscal agent" means any individual, firm, corporation, professional association, partnership, organization, or other legal entity which, through a contractual relationship with the Department of Human Services, the State of Arkansas receives, processes, and pays claims under the program;

(4) "Knowing" or "knowingly" means that the person has actual knowledge of the information or acts in deliberate ignorance or reckless disregard of the truth or falsity of the information;

(5) "Medicaid recipient" means any individual on whose behalf any person claimed or received any payment or payments from the program or its fiscal agents, whether or not any such individual was eligible for benefits under the program;

(6) "Person" means any provider of goods or services or any employee of the provider, whether that provider be an individual, individual medical vendor, firm, corporation, professional association, partnership, organization, or other legal entity under the program but which provides goods or services to a provider under the program or its fiscal agents; and

(7) "Records" means all documents in any form, including, but not limited to, medical documents and X rays, prepared by any person for the purported provision of any goods or services to any Medicaid recipient.

History. Acts 1993, No. 1299, § 1; 1999, No. 1544, § 6.

Amendments. The 1999 amendment rewrote (2) and (4).

U.S. Code. Title XIX of the Social Security Act, referred to in this section, is codified as 42 U.S.C. § 1396 et seq.

20-77-902. Liability for certain acts.

A person shall be liable to the State of Arkansas, through the Attorney General, for a civil penalty and restitution if he or she:

(1) Knowingly makes or causes to be made any false statement or representation of a material fact in any application for any benefit or payment under the Arkansas Medicaid program;

(2) At any time knowingly makes or causes to be made any false statement or representation of a material fact for use in determining rights to a benefit or payment;

(3) Having knowledge of the occurrence of any event affecting his or her initial or continued right to any benefit or payment or the initial or continued right to any benefit or payment of any other individual in whose behalf he or she has applied for or is receiving a benefit or payment knowingly conceals or fails to disclose that event with an intent fraudulently to secure the benefit or payment either in a greater amount or quantity than is due or when no benefit or payment is authorized;

(4) Having made application to receive any benefit or payment for the use and benefit of another and having received it, knowingly converts the benefit or payment or any part thereof to a use other than for the use and benefit of the other person;

(5) Knowingly presents or causes to be presented a claim for a physician's service for which payment may be made under the program and knows that the individual who furnished the service was not licensed as a physician;

(6) Knowingly solicits or receives any remuneration, including any kickback, bribe, or rebate, directly or indirectly, overtly or covertly, in cash or in kind:

(A) In return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under the program; or

(B) In return for purchasing, leasing, ordering, or arranging for or recommending purchasing, leasing, or ordering any good, facility, service, or item for which payment may be made in whole or in part under the program;

(7)(A) Knowingly offers or pays any remuneration, including any kickback, bribe, or rebate, directly or indirectly, overtly or covertly, in cash or in kind to any person to induce the person:

(i) To refer an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under the program; or

(ii) To purchase, lease, order, or arrange for or recommend purchasing, leasing, or ordering any good, facility, service, or item for which payment may be made in whole or in part under the program.

(B) Subdivision (7)(A) of this section shall not apply to:

(i) A discount or other reduction in price obtained by a provider of services or other entity under the program if the reduction in price is properly disclosed and appropriately reflected in the costs claimed or charges made by the provider or entity under the program;

(ii) Any amount paid by an employer to an employee who has a bona fide employment relationship with the employer for employment in the providing of covered items or services; or

(iii) Any amount paid by a vendor of goods or services to a person authorized to act as a purchasing agent for a group of individuals or entities who are furnishing services reimbursed under the program, if:

(a) The person has a written contract with each individual or entity which specifies the amount to be paid the person, which amount may be a fixed amount or a fixed percentage of the value of the purchases made by each individual or entity under the contract; and

(b) In the case of an entity that is a provider of services as defined in § 20-9-101, the person discloses, in the form and manner as the Director of the Department of Human Services requires, to the entity and upon request to the director the amount received from each vendor with respect to purchases made by or on behalf of the entity; and

(iv) Any payment practice specified by the director promulgated pursuant to applicable federal or state law;

(8) Knowingly makes or causes to be made or induces or seeks to induce the making of any false statement or representation of a material fact:

(A) With respect to the conditions or operation of any institution, facility, or entity in order that the institution, facility, or entity may qualify either upon initial certification or upon recertification as a hospital, rural primary care hospital, skilled nursing facility, nursing facility, intermediate care facility for the mentally retarded, home health agency, or other entity for which certification is required; or

(B) With respect to information required pursuant to applicable federal and state law, rules, regulations, and provider agreements;

(9) Knowingly:

(A) Charges for any service provided to a patient under the program money or other consideration at a rate in excess of the rates established by the state; or

(B) Charges, solicits, accepts, or receives, in addition to any amount otherwise required to be paid under the program, any gift, money, donation, or other consideration other than a charitable, religious, or philanthropic contribution from an organization or from a person unrelated to the patient as a precondition of admitting a patient to a hospital, nursing facility, or intermediate care facility for the mentally retarded or as a requirement for the patient's continued stay in the facility when the cost of the services provided therein to the patient is paid for in whole or in part under the program; or

(10) Knowingly makes or causes to be made any false statement or representation of a material fact in any application for benefits or for payment in violation of the rules, regulations, and provider agreements issued by the program or its fiscal agents.

History. Acts 1993, No. 1299, § 2.

20-77-903. Civil penalties.

(a)(1) It shall be unlawful for any person to commit any act proscribed by § 20-77-902, and any person found to have committed any such act or acts shall be deemed liable to the State of Arkansas, through the Attorney General, for full restitution and for a civil penalty of not less than five thousand dollars (\$5,000) and not more than ten thousand dollars (\$10,000) for each violation, plus three (3) times the amount of all payments judicially found to have been fraudulently received from the Arkansas Medicaid program or its fiscal agents because of the act of that person, except that if the court finds the following:

(A) The person committing the violation of this subchapter furnished officials of the Attorney General's office with all information known to the person about the violation within thirty (30) days after the date on which the defendant first obtained the information; and

(B) The person fully cooperated with any Attorney General's investigation of the violation, and at the time the person furnished the Attorney General with the information about the violation:

(i) No criminal prosecution, civil action, or administrative action had commenced under this subchapter with respect to the violation; and

(ii) The person did not have actual knowledge of the existence of an investigation into the violation.

(2) The court may assess not more than two (2) times the amount of damages which the state sustained because of the act of the person.

(b) In addition to any other penalties authorized herein, any person violating this subchapter shall also be liable to the State of Arkansas for the Attorney General's reasonable expenses, including the cost of investigation, attorney's fees, court costs, witness fees, and deposition fees.

(c) The entirety of any penalty less any reward which may be determined by the court pursuant to this subchapter shall be credited as special revenues of the State of Arkansas and deposited into the Arkansas Medicaid Program Trust Fund for the sole use of the program.

(d) For actions under this subchapter, the following shall apply:

(1) To enable the court to properly fix the amount of restitution, the Attorney General shall, after appropriate investigation, recommend an amount that would make the victim whole with respect to the money fraudulently received from the program or its fiscal agents, the expense of investigation, and all other measurable monetary damages directly related to the cause of action;

(2) If the defendant disagrees with the recommendation of the Attorney General, he or she shall be entitled to introduce evidence in mitigation of the amount recommended.

(e) For actions under this subchapter, whether tried by the court or the jury, the restitution and penalty shall be fixed by the court.

History. Acts 1993, No. 1299, §§ 3, 4;
1995, No. 1210, § 1.

20-77-904. Investigation by Attorney General.

(a) If the Attorney General has reasonable cause to believe that a person has information or is in possession, custody, or control of any document or other tangible object relevant to an investigation or that would lead to the discovery of relevant information in an investigation for violation of this subchapter, the Attorney General may serve upon the person, before bringing any action in the circuit court, a written demand to appear and be examined under oath, to answer written interrogatories under oath, and to produce the document or object for inspection and copying. The demand shall:

(1) Be served upon the person in the manner required for service of process in the State of Arkansas or by certified mail with return receipt requested;

(2) Describe the nature of the conduct constituting the violation under investigation;

(3) Describe the class or classes of documents or objects with sufficient definiteness to permit them to be fairly identified;

(4) Contain a copy of the written interrogatories;

(5) Prescribe a reasonable time at which the person must appear to testify, a time within which to answer the written interrogatories, and a time within which the document or object must be produced;

(6) Advise the person that objections to or reasons for not complying with the demand may be filed with the Attorney General on or before that time;

(7) Specify a place for the taking of testimony or for production and designate a person who shall be custodian of the document or object; and

(8) Contain a copy of subsections (b) and (d) of this section.

(b)(1) If a person objects to or otherwise fails to comply with the written demand served upon him or her under subsection (a) of this section, the Attorney General may file an action in the circuit court for an order to enforce the demand.

(2) Venue for the action to enforce the demand shall be in Pulaski County.

(3) Notice of a hearing on the action to enforce the demand and a copy of the action shall be served upon the person in the same manner as that prescribed in the Arkansas Rules of Civil Procedure.

(4) If the court finds that the demand is proper, that there is reasonable cause to believe there may have been a violation of this subchapter, and that the information sought or document or object demanded is relevant to the violation, it shall order the person to comply with the demand, subject to modifications the court may prescribe.

(c) If the person fails to comply with the order, the court may issue any of the following orders until the person complies with the order:

- (1) Adjudging the person in contempt of court;
- (2) Granting injunctive relief against the person to whom the demand is issued to restrain the conduct which is the subject of the investigation; or
- (3) Granting other relief as the court may deem proper.
- (d) The court may award to the Attorney General costs and reasonable attorney's fees as determined by the court against the person failing to obey the order.
- (e) Upon motion by the person and for good cause shown, the court may make any further order in the proceedings that justice requires to protect the person from unreasonable annoyance, embarrassment, oppression, burden, or expense.

History. Acts 1993, No. 1299, § 5.

20-77-905. Order compelling testimony or production of evidence — Immunity — Contempt.

(a)(1)(A) In any proceeding or investigation under this subchapter, if a person refuses to answer a question or produce evidence of any kind on the ground that he or she may be incriminated and if the Attorney General or prosecuting attorney requests the court in writing to order the person to answer the question or produce the evidence, the court may make this order, and the person shall comply with the order.

(B) If the court denies the request, the court shall state its reasons for the denial in writing.

(2) After complying, the testimony or evidence or any information directly derived from the testimony or evidence shall not be used against the person in any proceeding or prosecution of a crime or offense concerning which he or she gave an answer or produced evidence under the court order.

(3) Immunity obtained pursuant to this section does not exempt any person from prosecution, penalty, or forfeiture for any perjury, false swearing, or contempt committed in answering or failing to answer or in producing or failing to produce evidence in accordance with the order.

(b) If a person refuses to testify after being granted immunity and after being ordered to testify as prescribed in subsection (a) of this section, he or she may be adjudged in contempt.

History. Acts 1993, No. 1299, § 6.

20-77-906. Evidence — Disclosure.

(a) If the Attorney General determines that disclosure to the respondent of the evidence relied on to establish reasonable cause is not in the best interests of the investigation, he or she may request that the court examine the evidence in camera. If the Attorney General makes this request, the court may examine the evidence in camera and then make its determination.

(b)(1) Any procedure, testimony taken, or material produced under this section shall be kept confidential by the Attorney General before bringing an action against a person under this subchapter for the violation under investigation unless any of the following applies:

(A) Confidentiality is waived by the person whose testimony is disclosed;

(B) Confidentiality is waived by the person who produced to the Attorney General the material being disclosed;

(C) The testimony or material is disclosed solely to the person, or the person's attorney, who testified or provided the material to the Attorney General; or

(D) Disclosure is authorized by court order.

(2) The Attorney General may disclose the testimony or material to an agency director of the State of Arkansas, of the United States, or of any other state, to the prosecuting attorney, or to the United States Attorney.

(c) An investigator conducting an examination pursuant to this section may exclude from the place of examination any person except the person being examined and the person's counsel.

(d) Nothing in this section shall be construed to limit the Attorney General's authority to access provider records in accordance with existing provisions of the Arkansas Code of 1987 Annotated.

History. Acts 1993, No. 1299, § 5.

20-77-907. Records.

(a)(1) All persons under the Arkansas Medicaid program are required to maintain at the person's principal place of Medicaid business all records at least for a period of five (5) years from the date of claimed provision of any goods or services to any Medicaid recipient.

(2)(A) Any person found not to have maintained all records shall be guilty of a Class D felony if the unavailability of records impairs or obstructs a civil action pursuant to this subchapter.

(B) Otherwise, the unavailability of records shall be a Class A misdemeanor.

(b)(1) No potential Medicaid recipient shall be eligible for medical assistance unless he or she has authorized in writing the Director of the Department of Human Services to examine all records of his or her own or of those receiving or having received Medicaid benefits through him or her, whether the receipt of the benefits would be allowed by the program or not, for the purpose of investigating whether any person may have violated this subchapter or for use or potential use in any legal, administrative, or judicial proceeding.

(2) No person shall be eligible to receive any payment from the program or its fiscal agents unless that person has authorized in writing the director to examine all records for the purpose of investigating whether any person may have committed the crime of Medicaid

fraud or for use or for potential use in any legal, administrative, or judicial proceeding.

(c) The Attorney General shall be allowed access to all records of persons and Medicaid recipients under the program to which the director has access for the purpose of investigating whether any person may have violated this subchapter or for use or potential use in any legal, administrative, or judicial proceeding.

(d)(1) Records obtained by the director or the Attorney General pursuant to this subchapter shall be classified as confidential information and shall not be subject to outside review or release by any individual except when records are used or potentially to be used by any governmental entity in any legal, administrative, or judicial proceeding.

(2) Notwithstanding any other law to the contrary, no person shall be subject to any civil or criminal liability for providing access to records to the director, to the Attorney General, or to the prosecuting attorneys.

History. Acts 1993, No. 1299, § 12.

20-77-908. False claims jurisdiction — Procedure.

(a) Any action under this subchapter may be brought in the circuit court of the county where the defendant, or in the case of multiple defendants, any one (1) defendant resides.

(b) A civil action under this section may not be brought more than five (5) years after the date on which the violation of this subchapter is committed.

(c) In any action brought pursuant to this subchapter, the State of Arkansas shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

(d) A subpoena requiring the production of documents or the attendance of a witness at an interview, trial, or hearing conducted under this section may be served by the Attorney General or any duly authorized law enforcement officer in the State of Arkansas personally, telephonically, or by registered or certified mail. In the case of service by registered or certified mail, the return shall be accompanied by the return post office receipt of delivery of the demand.

History. Acts 1993, No. 1299, §§ 7, 8.

20-77-909. Injunctions against fraud.

(a)(1) Whenever it appears that any person is engaged in or intends to engage in the transfer, conversion, or destruction of assets, records, or property in an effort to avoid detection of violations of this subchapter, the Attorney General may apply to the Circuit Court of Pulaski County, or to the court in which the records or property are located, to seize and impound the property.

(2) The application for an ex parte order shall be in writing, furnish a reasonable basis for the granting of the proposed order, and demon-

strate that an emergency exists which would support the granting of the motion.

(b)(1) If the order is granted, the respondent shall be notified of the order seizing and impounding his or her property immediately after the seizure, or as soon as is reasonably practicable. If, after diligent inquiry, the respondent cannot be located, notice under this subsection may be accomplished by leaving a copy of the order at his or her dwelling house or usual place of abode with some person residing therein who is at least eighteen (18) years of age, or by delivering a copy thereof to a representative at the respondent's place of business who is at least eighteen (18) years of age.

(2) If the order is granted, the respondent shall be granted a hearing no later than five (5) days after being notified of the property's seizure for the purpose of determining whether the order should be continued.

(c) The burden at all stages of the proceeding shall be upon the state to prove by a preponderance of the evidence the necessity of the order of seizure.

History. Acts 1993, No. 1299, § 10; *cuit courts*, Ark. Const. Amend. 80, §§ 6, 1995, No. 984, § 1.

Cross References. Jurisdiction of cir-

20-77-910. Suspension of violators.

The Director of the Department of Human Services may suspend or revoke the provider agreement between the Department of Human Services and the person in the event that the person is found guilty of violating the terms of this subchapter.

History. Acts 1993, No. 1299, § 9.

20-77-911. Reward for the detection and punishment of Medicaid fraud.

(a) The court is authorized to pay a person sums, not exceeding ten percent (10%) of the aggregate penalty recovered, or in any case not more than one hundred thousand dollars (\$100,000), as it may deem just, for information the person may have provided which led to the detecting and bringing to trial and punishment persons guilty of violating the Medicaid fraud laws.

(b) Upon disposition of any civil action relating to violations of this subchapter in which a penalty is recovered, the Attorney General may petition the court on behalf of a person who may have provided information which led to the detecting and bringing to trial and punishment persons guilty of Medicaid fraud to reward the person in an amount commensurate with the quality of information determined by the court to have been provided, in accordance with the requirements of this subchapter.

(c)(1) If the Attorney General elects not to petition the court on behalf of the person, the person may petition the court on his or her own behalf.

(2) Neither the state nor any defendant within the action shall be liable for expenses which a person incurs in bringing an action under this section.

(d) Employees or fiscal agents charged with the duty of referring or investigating cases of Medicaid fraud who are employed by or who contract with any governmental entity shall not be eligible to receive a reward under this section.

History. Acts 1993, No. 1299, § 11.

SUBCHAPTER 10 — DONATED DENTAL SERVICES PROGRAM OF ARKANSAS

SECTION.

20-77-1001. Creation — Reporting requirement.

Cross References. Dentists, dental hygienists, and dental assistants, § 17-82-101 et seq.

20-77-1001. Creation — Reporting requirement.

(a) The Department of Human Services shall establish the Donated Dental Services Program of Arkansas to coordinate the services of volunteer dentists and dental laboratories who will provide comprehensive dental care to needy, disabled, aged, and medically compromised individuals.

(b) The department may fulfill its obligations under this section by awarding a grant for the administration of the program.

(c) The department shall file a report with the Legislative Council on the program no later than September 1 of each year.

History. Acts 1997, No. 145, § 1.

SUBCHAPTER 11 — ARKIDS FIRST PROGRAM ACT

SECTION.

20-77-1101. Title.

20-77-1102. Purpose.

20-77-1103. Definitions.

SECTION.

20-77-1104. Waiver — Rules.

20-77-1105. Funding.

20-77-1101. Title.

This subchapter shall be known and may be cited as the “ARKids First Program Act”.

History. Acts 1999, No. 849, § 1.

20-77-1102. Purpose.

The purpose and intent of this subchapter is to establish a program to provide access to appropriate health care services for eligible children in Arkansas.

History. Acts 1999, No. 849, § 2.

20-77-1103. Definitions.

For purposes of this subchapter:

(1) "Family" means a family as defined in the *Medical Services Policy Manual* of the Division of County Operations of the Department of Human Services; and

(2) "Health care coverage" means health care insurance as defined by rules promulgated by the Department of Human Services for the ARKids First Program.

History. Acts 1999, No. 849, § 3.

20-77-1104. Waiver — Rules.

The Department of Human Services has obtained a waiver from the Health Care Financing Administration to create and administer the ARKids First Program. The department shall administer and promulgate rules for the program in conformity with a Medicaid waiver and in a manner that:

(1)(A) Defines the population which may receive services provided or reimbursed through this program by limiting the program to children eighteen (18) years of age or younger without health care coverage who are members of a family with a gross family income not exceeding two hundred percent (200%) of the federal poverty guidelines.

(B) No person enrolled in the full Medicaid program may be concurrently enrolled in the ARKids First Program except as required by federal law;

(2) Defines health care coverage as health care insurance regulated by the State Insurance Department, specifically including group and employer-sponsored health insurance plans. The Department of Human Services may by rule exclude other plans or coverage from the definition of health care coverage;

(3) Provides for the automatic assignment of medical payments due as set out in §§ 20-77-302 and 20-77-307 as a condition of eligibility for benefits under the uninsured children's program;

(4)(A) Defines the services to be covered under the program, which shall include parity for outpatient mental health care.

(B) As used in subdivision (4)(A) of this section, "parity for mental health care" means coverage for the diagnosis and mental health treatment of mental illnesses and the mental health treatment of

those with developmental disorders under the same terms and conditions as provided for covered benefits offered under the program for the treatment of other medical illnesses or conditions and with no differences in the program in regard to any of the following:

- (i) The duration or frequency of coverage;
- (ii) The dollar amount of coverage; or
- (iii) Financial requirements.

(C) Providers of covered services shall be those providers enrolled as Medicaid providers, and reimbursement shall be at the rates established by the program; and

(5) Establishes a copayment for services received in the program as permitted by Medicaid waiver and as determined through promulgated rules.

History. Acts 1999, No. 849, § 4; 2001, No. 747, § 1.

Amendments. The 2001 amendment added “which shall include parity for out-

patient mental health care” to (4)(A), added present (4)(B), and redesignated former (4)(B) as present (4)(C).

20-77-1105. Funding.

(a) Funding for the uninsured children’s program shall be derived from funds as may be provided by the General Assembly, copayments, and any federal matching funds available to the program.

(b) It is further the intent of this subchapter that funds appropriated by the General Assembly for the purpose of funding the uninsured children’s program be used where appropriate and practical to match federal funding sources to enhance the total available funding for the operation of the uninsured children’s program.

(c) The ARKids First Program shall operate only if funds are available for its operation.

History. Acts 1999, No. 849, § 5.

SUBCHAPTER 12 — MEDICAID PROGRAM FOR LOW-INCOME DISABLED WORKING PERSONS

SECTION.

20-77-1201. Title.

20-77-1202. Purpose.

20-77-1203. Definitions.

SECTION.

20-77-1204. Administration — Regulation.

20-77-1205. Funding.

20-77-1201. Title.

This subchapter shall be known and may be cited as the “Medicaid Program for Low-Income Disabled Working Persons”.

History. Acts 1999, No. 1197, § 1.

20-77-1202. Purpose.

The purpose and intent of this subchapter is to establish a new optional categorically needy Medicaid eligibility group under § 4733 of the Balanced Budget Act of 1997 to provide medical assistance to disabled working persons whose family incomes are less than two hundred fifty percent (250%) of the federal poverty guidelines.

History. Acts 1999, No. 1197, § 2. of 1997 referred to in this section is codified primarily as as 42 U.S.C. § 254c-2.
U.S. Code. The Balanced Budget Act

20-77-1203. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1)(A) "Cost sharing" means the portion of the cost of a Medicaid-covered service which must be paid at the point of service by the eligible individual.

(B) Cost sharing shall be set on a sliding scale based on income;

(2) "Eligible individual" means an individual who meets the disability assets and unearned income standards to receive supplemental security income, who would be considered to be receiving supplemental security income benefits but for his or her earned income, and whose net combined family income is less than two hundred fifty percent (250%) of the federal poverty guideline;

(3) "Family" means family as defined in the Medical Services Program Policy Manual;

(4) "Medicaid-covered service" means physician, pharmacy, and hospital services covered for other categories of the Arkansas Medicaid program; and

(5) "Premium" means a charge which must be paid by an applicant as a condition of enrolling in the low-income disabled working person category of Medicaid eligibility.

History. Acts 1999, No. 1197, § 3.

20-77-1204. Administration — Regulation.

(a) The Department of Human Services is authorized to apply to the Health Care Financing Administration for approval to create and administer the low-income disabled working person category of Medicaid eligibility.

(b) The department shall promulgate rules for and administer the low-income disabled working person category of Medicaid eligibility in conformity with this subchapter with a state Medicaid plan amendment or waiver approved by the administration and in a manner that:

(1) Limits the population that may enroll in the low-income disabled working person category of Medicaid eligibility to eligible persons;

(2) Establishes premium and cost-sharing charges on a sliding scale based on income;

(3) Limits the services reimbursed to Medicaid-covered services furnished by providers enrolled as Medicaid providers;

(4) Limits reimbursements to the rates established by the department; and

(5) Provides for the automatic assignment of medical payments due as set out in §§ 20-77-302 and 20-77-307 as a condition of eligibility for benefits under the low-income disabled working person category of Medicaid eligibility.

History. Acts 1999, No. 1197, § 4.

20-77-1205. Funding.

(a) Funding for the low-income disabled working person category of Medicaid eligibility shall be derived from funds as may be provided by the General Assembly, premiums, cost sharing, and any federal matching funds available to the Medicaid Program for Low-Income Disabled Working Persons.

(b) It is further the intent of this subchapter that funds appropriated by the General Assembly for the purpose of funding the low-income disabled working person category of Medicaid eligibility be used where appropriate and practicable to match federal funding sources to enhance the total available funding for the operation of the program.

History. Acts 1999, No. 1197, § 5.

SUBCHAPTER 13 — MEDICAL ASSISTANCE PROGRAMS INTEGRITY LAW

SECTION.

20-77-1301. Title.

20-77-1302. Legislative intent and purpose.

20-77-1303. Definitions.

SECTION.

20-77-1304. Claims review and administrative sanctions.

20-77-1305. Settlement.

20-77-1301. Title.

This subchapter may be cited as the “Medical Assistance Programs Integrity Law”.

History. Acts 1999, No. 1544, § 1.

20-77-1302. Legislative intent and purpose.

(a) This subchapter is enacted to combat and prevent fraud and abuse committed by some health care providers participating in the medical assistance programs and by other persons and to negate the adverse effects those activities have on fiscal and programmatic integrity. The administrative sanctions imposed pursuant to this subchapter are intended to be in addition to those provided for in the Medicaid Fraud Act, § 5-55-101 et seq., and the Medicaid Fraud False Claims Act, § 20-77-901 et seq., and any proceeding brought hereunder shall not be a bar or defense to actions brought pursuant to these or other acts.

(b) The General Assembly intends to provide the Director of the Department of Human Services with the ability, authority, and re-

sources to pursue administrative sanctions and liquidated damages to protect the fiscal and programmatic integrity of the medical assistance programs from health care providers and other persons who engage in fraud, misrepresentation, abuse, or other ill practices, as set forth in this subchapter in order to obtain payments to which these health care providers or persons are not entitled.

History. Acts 1999, No. 1544, § 2.

20-77-1303. Definitions.

As used in this subchapter, the following terms shall have the following meanings:

(1) "Administrative adjudication" means adjudication and the adjudication process contained in the Arkansas Administrative Procedure Act, § 25-15-201 et seq.;

(2) "Claim" includes any request or demand, including any and all documents or information required by federal or state law or by rule, made against medical assistance programs funds for payment. A claim may be based on costs or projected costs and includes any entry or omission in a cost report or similar document, book of account, or any other document which supports, or attempts to support, the claim. A claim may be made through electronic means if authorized by the Department of Human Services. Each claim may be treated as a separate claim or several claims may be combined to form one claim;

(3) "Department director" or "director" means the Director of the Department of Human Services;

(4) "Health care provider" means any person furnishing or claiming to furnish a good, service or supply under the medical assistance programs, any other person defined as a health care provider by federal or state law or rule, and a provider-in-fact;

(5) "Medical assistance programs" means the Medical Assistance Program, Title XIX of the Social Security Act, commonly referred to as "Medicaid", and other programs operated by and funded in the department which provide payment to persons or entities providing any good, service, or supply to a recipient;

(6) "Order" means a final order imposed pursuant to an administrative adjudication;

(7) "Payment" means the payment to a health care provider from medical assistance programs funds pursuant to a claim, or the attempt to seek payment for a claim;

(8) "Recoupment" means recovery through the reduction, in whole or in part, of payment to a health care provider;

(9) "Rule" means any rule or regulation promulgated by the department in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq., and any federal rule or regulation promulgated by the federal government in accordance with federal law; and

(10) "Withhold payment" means to reduce or adjust the amount, in whole or in part, to be paid to a health care provider for a pending or

future claim during the time of a criminal, civil, or departmental investigation or proceeding or claims review of the health care provider.

History. Acts 1999, No. 1544, § 3. security Act, referred to in this section, is
U.S. Code. Title XIX of the Social Se- codified as 42 U.S.C. § 1396 et seq.

20-77-1304. Claims review and administrative sanctions.

(a)(1) Pursuant to rules and regulations promulgated in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq., the Director of the Department of Human Services shall establish a process to review a claim made by a health care provider to determine whether the claim should be or should have been paid as required by federal or state law or rule.

(2) Claims review may occur prior to or after payment is made to a health care provider.

(3) The director may withhold payment to a health care provider during claims review if necessary to protect the fiscal integrity of the medical assistance programs provided that the health care provider has an opportunity for a hearing within sixty (60) days of the date payment is withheld.

(b)(1) The director may establish various types of administrative sanctions pursuant to rules and regulations promulgated in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq., which may be imposed on a health care provider or other person who violates any provision of this subchapter or any other applicable federal or state law or rule related to the medical assistance programs.

(2) Administrative sanction shall include any or all of the following: recoupment, posting of bond or other security, or a combination thereof; exclusion as a health care provider; or liquidated damages.

(c)(1) The Department of Human Services shall conduct a hearing in compliance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq., at the request of a person who wishes to contest an administrative sanction imposed on him or her by the director.

(2) A party aggrieved by an order may seek judicial review in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(3) Judicial review of the order shall be conducted in compliance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(d) All state rules and regulations issued on or before July 30, 1999, shall be deemed to have been issued in compliance with the authority of this section.

History. Acts 1999, No. 1544, § 4.

20-77-1305. Settlement.

The Director of the Department of Human Services may agree to settle an administrative sanction. The terms of the settlement shall be reduced to writing and signed by the parties to the agreement. The

terms of the settlement shall be a public record. The settlement shall include the method and means of payment for recovery, including, but not limited to, adequate security for the full amount of the settlement.

History. Acts 1999, No. 1544, § 5.

SUBCHAPTER 14 — PRESCRIPTION DRUG ACCESS IMPROVEMENT ACT

SECTION.

20-77-1401. Title.

20-77-1402. Purpose.

20-77-1403. Definitions.

SECTION.

20-77-1404. Prescription drug benefit
Medicaid waiver.

20-77-1405. Waiver application.

20-77-1401. Title.

This subchapter shall be known and may be cited as the “Prescription Drug Access Improvement Act”.

History. Acts 2001, No. 1658, § 1.

20-77-1402. Purpose.

The purpose and intent of this subchapter is to authorize a Medicaid waiver to provide affordable prescription drugs for eligible persons age sixty-five (65) and over.

History. Acts 2001, No. 1658, § 1.

20-77-1403. Definitions.

As used in this subchapter:

- (1) “Department” means the Department of Human Services;
- (2) “Medicaid” means the Arkansas program of medical assistance established under Title XIX of the Social Security Act;
- (3) “Prescription Drug Access Program” means the limited prescription drug benefit Medicaid waiver program established under this subchapter;
- (4) “Prescription drugs” means controlled substances and legend drugs as defined in § 20-64-503; and
- (5) “Waiver” means the limited prescription drug benefit Medicaid waiver authorized by this subchapter.

History. Acts 2001, No. 1658, § 1.

U.S. Code. Title XIX of the Social Se-

curity Act, referred to in this section, is
codified at 42 U.S.C. § 1396 et seq.

20-77-1404. Prescription drug benefit Medicaid waiver.

The Department of Human Services may apply to the Health Care Financing Administration for a limited prescription drug benefit Medicaid waiver for persons who:

- (1) Are age sixty-five (65) or over;
- (2) Have no prescription drug coverage; and

(3) Have incomes and resources at or below the income-qualified and resource-qualified Medicare beneficiary eligibility standards established by the department.

History. Acts 2001, No. 1658, § 1.

20-77-1405. Waiver application.

Any waiver application submitted by the Department of Human Services shall include provisions for the department to:

(1)(A) Establish an income eligibility standard not to exceed:

(i) Eighty per cent (80%) of the federal poverty guideline for the period July 1, 2001, through June 30, 2002;

(ii) Ninety percent (90%) of the federal poverty guideline for the period July 1, 2002, through June 30, 2003; and

(iii) One hundred percent (100%) of the federal poverty guideline after June 30, 2003.

(B) Postpone or abolish any increases to the income eligibility standards if program costs exceed projections or if adequate funding is unavailable;

(2) Require qualified residents to pay an annual enrollment fee of twenty-five dollars (\$25.00) during the biennium beginning July 1, 2001;

(3) Have the authority to amend the qualified resident enrollment fee by rule beginning July 1, 2003, provided that qualified resident enrollment fee increases may not exceed fifteen percent (15%) during any state fiscal year;

(4) Establish copayments of ten dollars (\$10.00) for generic drugs and twenty dollars (\$20.00) for name brand drugs;

(5) Determine eligibility for limited prescription drug benefits under the waiver;

(6) Limit prescription drug benefits under the waiver to two (2) prescriptions per person per month; and

(7) Provide limited prescription drug benefits only in accordance with an approved waiver from the Health Care Financing Administration.

History. Acts 2001, No. 1658, § 1.

CHAPTER 78

CHILD CARE

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. LICENSING OF FACILITIES.
3. AGREEMENTS WITH ADJOINING STATES.
4. CHILD CARE PROVIDERS' TRAINING COMMITTEE. [REPEALED.]
5. EARLY CHILDHOOD COMMISSION.
6. BACKGROUND CHECKS OF CHILD CARE FACILITY LICENSEES AND EMPLOYEES.
7. PRENATAL AND EARLY CHILDHOOD NURSE HOME VISITATION PROGRAM.

A.C.R.C. Notes. Acts 1995, No. 1280, § 12, provided: "(a) There is hereby established a committee composed of a representative of the Department of Human Services, the Arkansas State Police, the Arkansas Early Childhood Commission, and the Child Care Facility Review Board which shall meet quarterly, in consultation with the Arkansas Child Care Providers Association, for purposes including, but not limited to, the following:

"(1) To review the implementation of a statewide criminal records check system for child care facility owners, operators, or employees;

"(2) To review funding for such system and certify quarterly reimbursement of funds; and

"(3) To report all findings and make recommendations to the Joint Committee on Children and Youth.

"(b) The Arkansas Early Childhood Commission shall have responsibility for coordinating the meetings of the committee.

"(c) All provisions of this section shall expire on July 1, 1996."

Acts 2001, No. 1280, §§ 1-3, provided: "SECTION 1. (a) Beginning with the 2001-2002 school year, the Department of Human Services, Division of Children and Family Services, shall develop a pilot project to place a limited number of family service workers into public schools.

"(b) The family service workers shall be employed by the Department of Human Services, but shall have their primary office located within a school building.

"(c) The family service worker's primary duty shall be to provide and coordinate services provided by the Department of Human Services, Division of Children and Family Services to students enrolled in the school whose families have active the Department of Human Services, Division of Children and Family Services cases and to provide preventive services as appropriate.

"(d) The school district shall make available to the assigned family service worker

a suitable office space within a public school in the district.

"SECTION 2. No family service worker will be assigned to a school unless:

"(1) The school requests that a family service worker be assigned;

"(2) The school enters into an agreement to pay fifty percent (50%) of the salary of the family service worker;

"(3) The school provides adequate space, equipment and supplies for the person assigned;

"(4) The school does not have a Human Service Worker in the school;

"(5) The assigning of the person from the Department of Human Services, Division of Children and Family Services would not unreasonably impair the operation of the Department of Human Services, Division of Children and Family Services county operations; and

"(6) The Director of the Division of Children and Family Services for the Department of Human Services agrees to participate in the pilot program to place family service workers in the public schools.

"SECTION 3. (a) The Division of Children and Family Services shall identify up to ten (10) positions to be utilized for this pilot project. During the 2002-2003 school the Division of Children and Family Services may [sic] increase the positions to be utilized for this pilot project to fifteen (15).

"(b) As personnel action to accomplish this pilot project may need approval from the Legislative Personnel Committee, this act expresses legislative support for approval of such actions as are needed to implement the project.

"(c) The Division of Children and Family Services shall develop criteria for the pilot project.

"(d) Legislative Audit shall conduct an evaluation of the comparative effectiveness of the Human Service Workers in the Schools program, the Family Service Workers in the Schools program and social workers in the school. The evaluation shall be completed by October 2002."

RESEARCH REFERENCES

ALR. Governmental liability for negligence in licensing, regulating, or supervising

private day-care home in which child is injured. 68 ALR 4th 266.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

20-78-101. Family planning information for parents of children in state custody.

20-78-102. Arkansas Children's Hospital — Annual report.

SECTION.

20-78-103. State or federal funds — Licensing requirements.

20-78-104. Child Health and Family Life Institute.

20-78-105. Children's advocacy centers.

Preambles. Acts 1929, No. 50 contained a preamble which read: "Whereas, by the Juvenile Court law enacted in 1911 and shown at sections 5751, 5752, 5753 et seq., of Crawford and Moses' Digest certain dependent and neglected children are made wards of this State; and

"Whereas, the Arkansas Children's Home and Hospital is a benevolent corporation organized under the statutes of the State of Arkansas for the purpose of treating, caring for and finding homes for dependent, neglected and crippled children and having valuable buildings and a going plant in active operation in that work at the seat of government of this State;

"Now, therefore...."

Effective Dates. Acts 1929, No. 50, § 2: effective on passage.

Acts 1981, No. 204, § 6: July 1, 1981. Emergency clause provided: "It is hereby found and determined by the Seventy-Third General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1981 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1981 could work irreparable harm upon the proper administration and providing of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1981."

Acts 1983, No. 100, § 9: July 1, 1983. Emergency clause provided: "It is hereby found and determined by the Seventy-Fourth General Assembly, that the Constitution of the State of Arkansas prohib-

its the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1983 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1983 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1983."

Acts 1991, No. 657, § 6: July 1, 1991. Emergency clause provided: "It is hereby found and determined by the Seventy-Eighth General Assembly that the effectiveness of this act on July 1, 1991 is essential to the effective operation of child care facilities and the operation of the Department of Human Services and that in the event of an extension of the Regular Session, the delay in the effective date of this act beyond July 1, 1991 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1991."

Acts 1995, No. 1099, § 33: July 1, 1995. Emergency clause provided: "It is hereby found and determined by the Eightieth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1995 is essential to the operation of the agency for which the appropriations in this Act are provided,

and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1995 could work irreparable harm upon the proper administration and provision of essential governmental programs.

Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1995."

20-78-101. Family planning information for parents of children in state custody.

(a) The Department of Human Services shall provide informational materials, including, but not limited to, parenting, child abuse, substance abuse, sexual abuse, and family planning, to parents whose children have been placed in state custody.

(b) This information shall be provided to both natural and adoptive parents and shall be provided within thirty (30) days of placing the child in state custody.

History. Acts 1999, No. 1240, § 1.

Publisher's Notes. Former § 20-78-101, concerning the Arkansas Children's Hospital as an official agency for certain

children, was repealed by Acts 1989, No. 51, § 1. The section was derived from Acts 1929, No. 50, § 1; Pope's Dig., §§ 7482, 12596; A.S.A. 1947, § 7-501.

20-78-102. Arkansas Children's Hospital — Annual report.

In order to provide accountability to the citizens of Arkansas for funds appropriated to a private institution, Arkansas Children's Hospital shall file, annually, a certified annual financial and operations report with the Legislative Joint Auditing Committee and the Chief Fiscal Officer of the State.

History. Acts 1981, No. 204, § 2; 1983, No. 100, § 5; A.S.A. 1947, § 13-366.

20-78-103. State or federal funds — Licensing requirements.

(a) The Department of Human Services shall not expend any state or federal funds for child care services to any child care facility unless that facility is licensed or approved by the Division of Child Care and Early Childhood Education, or registered with the department except where care is provided by a relative in a setting otherwise exempt from licensure.

(b) The provisions of this section shall not apply until January 1, 1992, to any facility which is currently exempt and which is providing child care services to participants in the Project Success Program.

(c) Prior to that time, such facilities may apply for licensure or become registered with the department.

(d) After January 1, 1992, the facility must either be licensed or registered to qualify for state or federal funds.

History. Acts 1991, No. 657, §§ 1, 2. amendment in (a) began "Beginning July 1, 1991."
A.C.R.C. Notes. As enacted, the 1991

20-78-104. Child Health and Family Life Institute.

(a)(1) The Child Health and Family Life Institute shall be administered under the direction of Arkansas Children's Hospital.

(2) Arkansas Children's Hospital shall enter into a cooperative agreement or contract with the Department of Pediatrics of the University of Arkansas for Medical Sciences for services required in delivering the programs of the institute.

(3) The KIDS FIRST Program, a component of the Child Health and Family Life Institute, shall receive priority consideration above all other programs of the institute when funding decisions are made by Arkansas Children's Hospital.

(4) Arkansas Children's Hospital shall make quarterly reports to the Legislative Council on matters of funding, existing programs, and any new programs and services offered through the institute.

(b)(1) The Chancellor of the University of Arkansas for Medical Sciences shall designate an individual from the department who shall provide administrative oversight of the cooperative agreements or contract with Arkansas Children's Hospital in delivering the programs of the institute.

(2) The department shall make every effort to advance the KIDS FIRST Program statewide.

(3) The designated administrator from the department shall make quarterly reports to the Chancellor and the Legislative Council on all matters of funding, existing programs, and services offered through the institute.

History. Acts 1995, No. 1099, § 27; 1995, No. 1198, § 96.

A.C.R.C. Notes. Acts 2001, No. 1638, § 16, provided: "MEDICAL SERVICES — CHILD AND FAMILY LIFE INSTITUTE. The Child Health and Family Life Institute shall be administered under the direction of Arkansas Children's Hospital. Arkansas Children's Hospital shall enter into a cooperative agreement and/or contract with the University of Arkansas for Medical Sciences — Department of Pediatrics for services required in delivering the programs of the Child Health and Family Life Institute. The KIDS FIRST Program, a component of the Child Health and Family Life Institute, shall receive priority consideration above all other programs of the Institute when funding decisions are made by Arkansas Children's Hospital. Arkansas Children's Hospital

shall make quarterly reports to the Arkansas Legislative Council on matters of funding, existing programs and any new programs and/or services offered through the Child Health and Family Life Institute.

"The Chancellor of the University of Arkansas for Medical Sciences shall designate an individual from the Department of Pediatrics who shall provide administrative oversight of the cooperative agreements and/or contracts with Arkansas Children's Hospital in delivering the programs of the Child Health and Family Life Institute. The designated administrator from the University of Arkansas for Medical Sciences-Department of Pediatrics shall make quarterly reports to the Chancellor of the University of Arkansas for Medical Sciences and the Arkansas Legislative Council on all matters of funding, existing programs and services offered

through the Child Health and Family Life Institute. Further, the Department of Pediatrics shall make every effort to advance the KIDS FIRST Program statewide.

"The provisions of this section shall be in effect only from July 1, 2001 through June 30, 2003."

Acts 2001, No. 1669, § 27, provided: "CHILD HEALTH AND FAMILY LIFE INSTITUTE. The Child Health and Family Life Institute shall be administered under the direction of Arkansas Children's Hospital. Arkansas Children's Hospital shall enter into a cooperative agreement and/or contract with the University of Arkansas for Medical Sciences — Department of Pediatrics for services required in delivering the programs of the Child Health and Family Life Institute. The KIDS FIRST Program, a component of the Child Health and Family Life Institute, shall receive priority consideration above all other programs of the Institute when funding decisions are made by Arkansas Children's Hospital. Arkansas Children's Hospital shall make quarterly reports to the Arkansas Legislative Council on mat-

ters of funding, existing programs and any new programs and/or services offered through the Child Health and Family Life Institute.

"The Chancellor of the University of Arkansas for Medical Sciences shall designate an individual from the Department of Pediatrics who shall provide administrative oversight of the cooperative agreements and/or contracts with Arkansas Children's Hospital in delivering the programs of the Child Health and Family Life Institute. The designated administrator from the University of Arkansas for Medical Sciences-Department of Pediatrics shall make quarterly reports to the Chancellor of the University of Arkansas for Medical Sciences and the Arkansas Legislative Council on all matters of funding, existing programs and services offered through the Child Health and Family Life Institute. Further, the Department of Pediatrics shall make every effort to advance the KIDS FIRST Program statewide.

"The provisions of this section shall be in effect only from July 1, 2001 through June 30, 2003."

20-78-105. Children's advocacy centers.

(a) Currently, sexually abused children often have to describe their sexual abuse several times to different professionals at different locations. Many investigations are conducted with little collaboration between the agencies involved in the cases. Each agency's child abuse professionals are officed in a different facility, and interface during the investigation and management of cases is limited. Sexual abuse medical examinations are commonly performed in hospital emergency rooms and other sites that are frightening to children, lack the proper equipment, and often are staffed by physicians uncomfortable with these exams. It is the intent of the General Assembly to institute pilot programs to provide the services just described under one (1) roof and to provide a more child-friendly atmosphere, less trauma to the children and families, improved investigations and management, more effective utilization of multiagency information, greater protection of children, increased prosecution of perpetrators, and less unnecessary family intervention.

(b) In order to accomplish these goals, the Department of Arkansas State Police is hereby authorized to utilize moneys appropriated for its maintenance and general operation to make grants to and to contract with children's advocacy centers for facilities and services.

(c)(1) The Arkansas Child Abuse/Rape/Domestic Violence Commission shall advise the Department of Arkansas State Police as to children's advocacy centers which qualify for grants or contracts from the Department of Arkansas State Police.

(2) Qualified children's advocacy centers should:

(A) Provide a child-friendly, comfortable place for interviewing children and families, examining the children, and initiating services;

(B) Provide crisis intervention for the child and family as well as appropriate referrals for psychological treatment if not available on site; and

(C) Provide offices for law enforcement, employees of the Department of Human Services, and health care professionals in order to deliver collaborative evaluations and services.

History. Acts 1999, No. 1575, § 1.

SUBCHAPTER 2 — LICENSING OF FACILITIES

SECTION.

- 20-78-201. Title.
- 20-78-202. Definitions.
- 20-78-203. Penalties.
- 20-78-204. Injunction.
- 20-78-205. Division of Child Care and Early Childhood Education.
- 20-78-206. Division of Child Care and Early Childhood Education — Rules and regulations.
- 20-78-207. Declaratory judgments on licensing rules or regulations.
- 20-78-208. Unlicensed child care facility unlawful.
- 20-78-209. License — Religious exception.
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SECTION.

- 20-78-211. License — Provisional.
- 20-78-212. License — Nontransferability.
- 20-78-213. License — Denial, revocation, or suspension.
- 20-78-214. Inspections and investigations of facilities and personnel — Child abuse.
- 20-78-215. Child sexual abuse — Federal funds.
- 20-78-216. Records and reports.
- 20-78-217. Smoking prohibited.
- 20-78-218. Administration of subchapter.
- 20-78-219. Fines and penalties — Disposition of funds.
- 20-78-220. Persons or facilities abusing juveniles in their custody.
- 20-78-221. Voluntary registration.
- 20-78-222. Continuing education.
- 20-78-223. License fees — Disposition.
- 20-78-224. Child Care Fund.

A.C.R.C. Notes. References to "this subchapter" in the text of §§ 20-78-201 — 20-78-219 may not apply to §§ 20-78-220 and 20-78-221—20-78-224, which was enacted subsequently.

Publisher's Notes. Acts 1987, No. 856, § 2, provided: "This Act shall be liberally construed to assure quality child care to the children of the State of Arkansas and shall be considered cumulatively with respect to any other authority of the Child Care Facility Review Board to regulate child care facilities."

Cross References. Child-placement agency licensing, § 9-28-401 et seq.

Interstate compact on placement of children, § 9-29-201 et seq.

Title XX Social Security Funds, § 19-7-701 et seq.

Tax refunds for construction of employer operated child care facilities, §§ 26-52-516, 26-53-132.

Preambles. Acts 1983, No. 245 contained a preamble which read: "Whereas, Section 1 of Act 518 of 1981 now provides that a religious exemption may be obtained by any religious child care facility organized, and operating as of July 1, 1969, and

"Whereas, many religious child care facilities have been organized or started to operate religious child care facilities since July 1, 1969, and

"Whereas, many religious child care fa-

cilities are now included within the definition of Child Care Facilities,

"Now, therefore"

Acts 1987, No. 745 contained a preamble which read: "Whereas, many persons provide routine care for unrelated children as babysitters or "family daycare" which are exempt from State licensure because they care for children of not more than four (4) families and less than six (6) children; and

"Whereas, the Arkansas Juvenile Code addresses remedies as to parents of a particular dependent-neglected child, but does not extend protection to children not the subject of an individual abuse or neglect complaint; and

"Whereas, it is the intent of the General Assembly to protect such children;

"Now therefore...."

Effective Dates. Acts 1977, No. 349, § 4: Mar. 3, 1977. Emergency clause provided: "It is hereby found and determined by the General Assembly that the existing laws pertaining to license, revocation and suspension by the Child Care Facility Review Board permit the Board to revoke licenses without notice and without a hearing, which procedures are likely violative of the due process laws of the Constitution of the State of Arkansas and of the United States; that this Act is designed to correct this undesirable situation by requiring the Child Care Facility Review Board to comply with the provisions of the Arkansas Administrative Procedure Law, and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1985, No. 862, § 3: emergency failed to pass.

Acts 1985, No. 1050, § 5: Apr. 17, 1985. Emergency clause provided: "It is hereby found and determined by the Seventy-Fifth General Assembly that there is a critical need to address the rising incidence of child sexual abuse through methods and funding made available by the Federal government and that the State of Arkansas should be enabled to participate in such Federal funds by vesting regulatory discretion within the Director of the Department of Human Services to comply with Federal conditions of participation.

Therefore, an emergency is hereby declared to exist, and this Act, being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect immediately from and after its passage and approval."

Acts 1995, No. 1280, § 20: Apr. 13, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the immediate effectiveness of this act is essential to the safety and well-being of Arkansas children who are cared for in child care facilities. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1997, No. 312, § 24: Feb. 28, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that the duties of the Joint Interim Committee on Children and Youth shall be transferred to the Senate Interim Committee on Children and Youth; that such transfer should begin upon the adjournment of this Regular Session; and that unless this emergency clause is adopted the transfer will not occur until ninety days past the Regular Session. Therefore, an emergency is declared to exist and this act being immediately nec-

essary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1999, No. 1222, § 21: Apr. 8, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly, that it is essential to the effective and efficient administration of the Child Care Licensing program that the responsibility for reviewing ap-

peals be placed in the Child Care Appeal Review Panel under the Department of Human Services, as soon as possible and that this act is designed to accomplish this purpose and should be given effect immediately. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval of the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

RESEARCH REFERENCES

ALR. Governmental liability for negligence in licensing, regulating, or supervising

private day-care home in which child is injured. 68 ALR 4th 266.

20-78-201. Title.

This subchapter shall be known and cited as the "Child Care Facility Licensing Act".

History. Acts 1969, No. 434, § 1; A.S.A. 1947, § 83-901.

20-78-202. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1)(A) "Child Care Appeal Review Panel" or "panel" means an eleven-member body under the Department of Human Services which shall serve as a review and appeal body regarding licensure or registration actions.

(B)(i) The panel shall consist of eleven (11) members, including the following:

- (a) Three (3) early childhood professionals;
- (b) One (1) pediatric health professional;
- (c) One (1) parent of a child in a licensed early childhood program;
- (d) The Director of the Division of Child Care and Early Childhood Education or his or her designee who shall serve as chair of the panel and shall not vote; and

(e) Five (5) licensed child care providers representing a diversity of child care settings.

(ii) Legal counsel from the office of the Attorney General shall serve as a facilitator of the panel and shall not serve as a voting member.

(iii) Alternates shall be chosen to serve during times of absence or in cases of conflict of interest. Five (5) alternates shall be chosen as follows:

- (a) One (1) early childhood professional;
 - (b) One (1) pediatric health professional;
 - (c) One (1) parent of a child in a licensed early childhood program;
- and
- (d) Two (2) licensed child care providers.

(iv) Members of the panel shall not be members of the Arkansas Early Childhood Commission.

(C)(i) The commission, from applications submitted, shall make panel selections from persons meeting the qualifications for service and exhibiting a willingness and time commitment to serve on the panel.

(ii) Panel members may be replaced under the same guidelines as commission members.

(D)(i) Members of the panel shall serve for three-year terms, not to exceed six (6) consecutive years of service on the panel.

(ii) Members from the office of the Attorney General and the Director of the Division of Child Care and Early Childhood Education shall hold permanent offices.

(E) Members of the panel shall receive no compensation other than normal state reimbursement for travel, meals, and lodging when applicable.

(F) The panel shall schedule monthly meetings and may meet more often as necessary.

(G) A majority of the panel shall constitute a quorum, and a majority of those present may decide any issue before the panel. In the event of a tie vote by the panel, the division's decision shall stand.

(H)(i) Decisions of the panel shall be the final administrative appeal.

(ii) Providers or the division may appeal the panel's findings to the circuit court of the licensee's county of residence or to the Circuit Court of Pulaski County.

(I) There shall be no monetary liability on the part of and no cause of action for damages shall arise against any member of the panel for any act or proceeding undertaken or performed within the scope of the functions of the panel if the panel member acts without malice or fraud;

(2)(A)(i) "Child care facility" means any facility which provides care, training, education, or supervision for any unrelated minor child, whether or not the facility is operated for profit and whether or not the facility makes a charge for the services offered by it.

(ii) For the purposes of this subdivision (2), "related minor child" means a minor child related by blood, marriage, or adoption to the owner or operator of the facility or a minor child who is a ward of the owner or operator of the facility pursuant to a guardianship order issued by an Arkansas court of competent jurisdiction.

(B) This definition includes, but is not limited to, a nursery, a nursery school, a kindergarten, a day care center, or a family day care home.

(C) In any case where a facility or the owner or operator thereof is appointed guardian of a total of ten (10) or more minors, it shall be presumed that the facility, owner, or operator is engaged in child care and shall be subject to child care facility licensure.

(D) However, this definition does not include:

(i) Special schools or classes operated solely for religious instruction;

(ii) Facilities operated in connection with a church, shopping center, business, or establishment where children are cared for during short periods of time while parents or persons in charge of the children are attending church services, shopping, or engaging in other activities during the periods;

(iii) Any educational facility, whether private or public, which operates solely for educational purposes in grades one (1) or above and does not provide any custodial care;

(iv) Kindergartens operated as a part of the public schools of this state;

(v) Any situation, arrangement, or agreement by which one (1) or more persons care for fewer than six (6) children from more than one (1) family at the same time;

(vi) Any educational facility, whether public or private, which operates a kindergarten program in conjunction with grades one (1) and above and provides short-term custodial care prior to or following classes for those students;

(vii)(a) Any recreational facility or program, whether public or private, which operates solely as a place of recreation for minor children.

(b) For purposes of this subdivision (2), a "recreational facility or program" is defined as a facility or program which operates with children arriving and leaving voluntarily for scheduled classes, activities, practice, games, and meetings;

(viii) Any state-operated facility to house juvenile delinquents or any serious offender program facility operated by a state designee to house juvenile delinquents, foster home, group home, or custodial institution. Those facilities shall be subject to program requirements modeled on nationally recognized correctional and child welfare standards, which shall be developed, administered, and monitored by the Division of Youth Services; and

(ix) The Arkansas School for Mathematics and Sciences;

(3) "Department" means the Department of Human Services;

(4) "Deputy director" means the Deputy Director of the Division of Child Care and Early Childhood Education; and

(5) "Division" means the Division of Child Care and Early Childhood Education of the Department of Human Services.

History. Acts 1969, No. 434, § 2; 1973, No. 123, § 4; 1983, No. 331, § 1; A.S.A. 1947, § 83-902; Acts 1989, No. 399, § 1; 1991, No. 163, § 1; 1995, No. 1340, § 1; 1997, No. 948, § 2; 1997, No. 1132, § 1; 1999, No. 1222, § 6.

A.C.R.C. Notes. Acts 1999, No. 1222, § 6, also provided, in part: "Start-up terms would be staggered one (1), two (2), and three (3) years so that Panel members would not leave their terms during the same year. Start-up terms to be determined by random selection."

Amendments. The 1997 amendment by No. 948 added (4)(B)(iii)(i).

The 1997 amendment by No. 1132 re-

wrote (1); substituted "Division of Child Care and Early Childhood Education" for "appropriate division" in (3); deleted "custody" preceding "or supervision" in (4)(A); deleted "foster home, group home, and custodial institution" in (4)(B)(i); in (4)(B)(iii)(h), added "foster home, group home, or custodial institution" in the first sentence, in the second sentence, substituted "correctional and child welfare standards," for "correctional facility standards" and inserted "and the Division of Children and Family Services" following "Division of Youth Services."

The 1999 amendment rewrote this section.

20-78-203. Penalties.

(a)(1) Any person violating any provisions of this subchapter and any person assisting any partnership, group, corporation, organization, or association in violating any provisions of this subchapter shall be deemed guilty of a misdemeanor and upon conviction shall be fined in any sum not less than twenty-five dollars (\$25.00) and not more than one hundred dollars (\$100).

(2) Each day of the violation shall constitute a separate offense.

(b)(1) The Division of Child Care and Early Childhood Education is authorized to impose monetary fines as civil penalties to be paid for failure to comply with the provisions of this subchapter or the regulations promulgated pursuant thereto.

(2) In determining whether a civil penalty is to be imposed, the following factors shall be considered by the division:

(A) The gravity of the violation, including the probability that death or serious physical harm to a child will result or has resulted, the severity and scope of the actual or potential harm, and the extent to which the provisions of the applicable statutes or regulations were violated;

(B) The exercise of good faith. Indications of good faith include, but are not limited to, awareness of the applicable statutes and regulations and reasonable diligence in securing compliance, prior accomplishments manifesting the desire to comply with the requirements, efforts to correct, and any other mitigating factors in favor of the operator;

(C) Any relevant previous violations committed; and

(D) The financial benefit of committing or continuing the violation.

(c) Prior to the imposition of monetary fines, the division shall provide notice and an opportunity to be heard before the Child Care Appeal Review Panel in accordance with hearing procedures in effect for the revocation or suspension of licenses.

(d)(1) The division, with the review and approval of the Arkansas Early Childhood Commission, shall publish and promulgate rules and regulations classifying violations as follows:

(A) Class A violations involve essential standards which must be met for substantial compliance to licensing requirements. These standards address fire, health, safety, nutrition, staff to child ratio, and space.

(B) Operation of an unlicensed child care facility shall be considered a Class A violation. However, the definition of unlicensed child care facility shall not be interpreted to include exempt child care facilities as defined in § 20-78-209.

(C) Class A violations are subject to a civil penalty of one hundred dollars (\$100) for each violation; and

(2)(A) Class B violations involve administrative standards and standards which do not directly threaten the immediate health, safety, or welfare of the children.

(B) Class B violations are subject to a civil penalty of fifty dollars (\$50.00) for each violation.

(3) Each day of occurrence of a Class A or Class B violation shall constitute a separate violation.

(4) Aggregate fines assessed for violation in any one (1) month shall not exceed five hundred dollars (\$500) for Class A violations or two hundred fifty dollars (\$250) for Class B violations.

(e) When a facility has been found by the division to have committed Class A or Class B violations, then upon final administrative determination by the panel, notice shall be posted in the facility stating the violations found by the division to have occurred and the current status of the license. This notice shall be posted in the facility, in a conspicuous place clearly visible to all staff, to all other individuals in the facility, and to all visitors to the facility.

(f) Failure to post a proper notice as required by this section shall be considered to be a Class B violation for which civil penalties may be imposed as authorized by this section. Each day of noncompliance constitutes a separate offense.

History. Acts 1969, No. 434, § 14; A.S.A. 1947, § 83-914; Acts 1987, No. 856, § 1; 1991, No. 888, § 1; 1997, No. 1132, § 2; 1999, No. 1222, § 7.

Amendments. The 1997 amendment substituted "Division" for "Child Care Facility Review Board" in (c) and (e); substituted "Division" for "board" in (b) and twice in (e); substituted "Division of Child Care and Early Childhood Education" for

"Child Care Facility Review Board" in (b); substituted "harm to a child will result" for "harm to a resident will result" in (b)(1); and rewrote (d).

The 1999 amendment inserted "before the Child Care Appeal Review Panel" in (c); substituted "approval" for "advice" in (d); substituted "by the panel" for "by the division" in (e); and made stylistic changes.

20-78-204. Injunction.

When any person, partnership, group, corporation, organization, or association shall operate or assist in the operation of a child care facility which has not been licensed by the Division of Child Care and Early Childhood Education or has had the license denied, suspended, or revoked and has been ordered to cease and desist operation, in

accordance with the provisions of this subchapter, the division shall have the right to go into the circuit court in the jurisdiction in which the child care facility is being operated and, upon affidavit, secure a writ of injunction, without bond, restraining and prohibiting the person, partnership, group, corporation, organization, or association from operating the child care facility.

History. Acts 1969, No. 434, § 15; A.S.A. 1947, § 83-915; Acts 1989, No. 399, § 2; 1997, No. 1132, § 3; 1999, No. 1222, § 8.

Amendments. The 1997 amendment substituted "Division" for "Board" three times.

The 1999 amendment substituted "Di-

vision of Child Care and Early Childhood Education" for "division," deleted "by the division" following "revoked" and "therefore" preceding "has been ordered."

Cross References. Jurisdiction of circuit courts, Ark. Const. Amend. 80, §§ 6, 19.

CASE NOTES

Cited: Jacksonville Christian Academy v. Arkansas Social Servs., 277 Ark. 339, 641 S.W.2d 716 (1982).

20-78-205. Division of Child Care and Early Childhood Education.

(a)(1) There is created the Division of Child Care and Early Childhood Education within the Department of Human Services. In creating the division, the General Assembly intends for the following to be maintained and enhanced:

(A) Coordination of existing early childhood education and child care programs;

(B) Placement of children in quality early childhood programs which support their development and readiness for school;

(C) Development of new child care services under welfare reform which promote the developmental needs of children receiving transitional employment assistance benefits or other forms of public assistance;

(D) Quality program standards for all early childhood and child care programs;

(E) State support for early childhood and child care programs to attain quality program standards;

(F) Economic and cultural integration of children in early childhood programs;

(G) Access to additional support services for early childhood and child care programs, such as health care and nutrition services;

(H) Career development opportunities for early childhood program staff;

(I) On-going interagency planning and collaboration in regard to early childhood and child care;

(J) Parent support and education in choosing appropriate early childhood programs for their children; and

(K) State support for local leadership, program innovation, and excellence in early childhood and care programs.

(b) The division shall have the following duties:

(1) Administration of the Child Care and Development Block Grant and other child care funds, state and federal, which are available to the Department of Human Services;

(2) Administration of Arkansas Better Chance Program, under interagency agreement with the Department of Education;

(3) Administration of the Special Nutrition Program;

(4) Establishment and promulgation of rules and regulations to be approved by the Arkansas Early Childhood Commission setting standards governing the granting, revocation, refusal, and suspension of licenses for a child care facility and the operation of child care facilities in this state, as defined by § 20-78-202;

(5) Staff support for the operation of the commission;

(6) Provide consultative resources for the private sector in developing child care programs;

(7) Provide consultative resources for the private sector in developing child care facilities; and

(8) Solicit grant funds for exemplary early childhood and child care programs.

(c) No later than October 1, 1998, an appropriate subcommittee of the Joint Budget Committee shall be designated to perform a comprehensive review of the division to determine whether the creation of the division within the Department of Human Services has been consistent with legislative intent. The review shall be conducted with advice from the Senate Committee on Children and Youth, the House Subcommittee on Children and Youth of the House Committee on Aging, Children and Youth, Legislative and Military Affairs, the House Committee on Education, and the Senate Committee on Education. The subcommittee shall forward a recommendation to the Governor and the Joint Budget Committee, and a determination of the status of the division shall be made prior to the 1999 General Assembly.

(d)(1) In addition to any other rights, powers, functions, and duties granted by law to the division, the Department of Human Services is hereby authorized to promote and cooperate in the establishment of a foundation under the Arkansas nonprofit corporation law and to accept support and assistance in the form of money, property, or otherwise from the foundation to be used to enhance quality, affordability, and availability of child care and early education for all children in the state.

(2) If a foundation is established for the early care and education of children and if the Department of Human Services shares resources or facilities with the foundation or accepts support and assistance from the foundation, the foundation shall file annually a report with the Governor, the Legislative Council, and the Legislative Joint Auditing Committee showing the amount and source of all gifts, grants, and donations of money or property received by the foundation and all

expenditures or other dispositions of money or property by the foundation during the preceding year.

(3) After consultation with the commission, the Director of the Division of Child Care and Early Childhood Education shall prepare rules for the use of foundation funds. The director shall submit the proposed rules to the Legislative Council for its review.

(4) No person over whom the Department of Human Services has day-to-day managerial control shall receive compensation or remuneration from funds not in the State Treasury.

History. Acts 1969, No. 434, § 12; 1973, No. 123, § 2; 1979, No. 904, § 1; A.S.A. 1947, § 83-911; Acts 1987, No. 856, § 1; 1989, No. 400, §§ 1, 2; 1995, No. 1280, §§ 13, 14; 1997, No. 250, § 205; 1997, No. 1132, § 4; 1999, No. 1222, § 9; 2001, No. 1271, § 1.

A.C.R.C. Notes. Pursuant to § 1-2-207, this section is set out above as amended by Acts 1997, No. 1132. Former subsection (c) was amended by Acts 1997, No. 250, to read as follows: "(c) Members of the board shall serve without compensation, but each member of the board may receive expense reimbursement in accordance with § 25-16-901 et seq. from funds appropriated for the maintenance and op-

eration of the Division of Children and Family Services of the Department of Human Services."

Amendments. The 1997 amendment rewrote this section.

The 1999 amendment inserted "to be approved by the Arkansas Early Childhood Commission" in (b)(4).

The 2001 amendment added (d).

Cross References. Department of Human Services, continued operation under § 25-10-102.

Arkansas Nonprofit Corporation Act, §§ 4-28-201 — 4-28-206 and 4-28-209 — 4-28-224.

Arkansas Nonprofit Corporation Act of 1993, § 4-33-101 et seq.

20-78-206. Division of Child Care and Early Childhood Education — Rules and regulations.

(a)(1)(A) The Division of Child Care and Early Childhood Education, with the approval of the Arkansas Early Childhood Commission, shall promulgate and publish rules and regulations setting minimum standards governing the granting, revocation, refusal, and suspension of licenses for a child care facility and the operation of a child care facility.

(B) In developing proposed rules and regulations, the division shall consult with the Director of the Department of Health or his or her designated representative in regard to rules and regulations relating to health.

(C) The commission shall review and approve proposed rules and regulations promulgated by the division.

(2)(A)(i) However, no child care facility shall continue to admit a child who has not been age-appropriately immunized from poliomyelitis, diphtheria, tetanus, pertussis, red (rubeola) measles, rubella, and any other diseases as designated by the State Board of Health within fifteen (15) program days after the child's original admission.

(ii) The immunization shall be evidenced by a certificate of a licensed physician or a public health department acknowledging the immunization. The division shall consult with the Director of the

Department of Education or his or her designated representative in regard to rules and regulations relating to education.

(B)(i) The provisions of subdivision (a)(2)(A) of this section pertaining to immunizations shall not apply if the parents or legal guardian of that child object thereto on the grounds that such immunization conflicts with the religious tenets and practices of a recognized church or religious denomination of which the parent or guardian is an adherent or member.

(ii) Furthermore, the provisions of subdivision (a)(2)(A) of this section requiring pertussis vaccination shall not apply to any child with a sibling, either whole blood or half blood, who has had a serious adverse reaction to the pertussis antigen, which reaction resulted in a total permanent disability.

(3) The Director of the Department of Health and the Director of the Department of Education and their designated representatives are directed to cooperate with and assist the division in developing rules and regulations in the respective areas of health and education.

(4) In developing these rules and regulations, the division shall consult with such other agencies, organizations, or individuals as it shall deem appropriate.

(5) Rules and regulations promulgated by the division pursuant to this section may be amended by the division from time to time provided that any amendment to the rules and regulations shall be published and furnished to all licensed child care facilities and to all applicants for a license approved by the commission at least sixty (60) days prior to the effective date of the amendment.

(b) In establishing requirements and standards for the granting, revocation, refusal, and suspension of a license for a child care facility, the division shall adopt such rules and regulations as will:

(1) Promote the health, safety, and welfare of children attending a child care facility;

(2) Promote safe, comfortable, and healthy physical facilities for the children who attend the child care facility;

(3) Ensure adequate supervision of the children by capable, qualified, and healthy individuals;

(4) Ensure appropriate educational programs and activities; and

(5) Ensure adequate and healthy food service where food service is offered by the child care facility.

(c)(1) Questions between providers and the division concerning substantial compliance with the published standards, founded licensing complaints, denials of alternative compliance requests, and adverse actions shall first be appealed through the division's internal appeal process and then may be appealed through the Child Care Appeal Review Panel for determination.

(2) The division shall follow the procedures prescribed for adjudication in the Arkansas Administrative Procedure Act, § 25-15-201 et seq., in exercising any power authorized by § 20-78-213.

(d) If, upon the filing of a petition for a judicial review, the reviewing court enters a stay prohibiting enforcement of a decision of the division,

the court shall complete its review of the record and announce its decision within one hundred twenty (120) days of the entry of the stay. If the court does not issue its findings within one hundred twenty (120) days of the issuance of the stay, the stay shall be considered vacated.

(e) All rules and regulations promulgated pursuant to this section shall be reviewed by the Senate Interim Committee on Children and Youth or an appropriate subcommittee thereof and the Subcommittee on Children and Youth of the House Committee on Aging, Children and Youth, Legislative and Military Affairs.

(f)(1) Any person with reasonable cause to suspect that a child care facility has violated any provision of this subchapter or any rule or regulation of the division may immediately notify the Department of Human Services.

(2) The Department of Human Services shall not release data that would identify the person who made the report or who cooperated in a subsequent investigation of a child care facility unless a court of competent jurisdiction orders the release of information for good cause shown.

(3) Following the inspection and investigation of a child care facility as provided under this subsection (f), the Department of Human Services shall, upon request, provide information to the person or agency reporting the suspected violation as to whether an investigation has been conducted.

(4) Willfully making false notification pursuant to this subsection (f) shall be a Class C misdemeanor.

History. Acts 1969, No. 434, § 4; 1977, No. 349, § 2; A.S.A. 1947, §§ 83-904, 83-911.1; Acts 1991, No. 888, §§ 2, 4; 1995, No. 1280, § 15; 1997, No. 312, § 17; 1997, No. 870, § 1; 1997, No. 1132, § 5; 1999, No. 1222, § 10.

Publisher's Notes. Acts 1973, No. 123, § 2, provided, in part, that all powers vested in the Welfare Commissioner and the Welfare Department with respect to the promulgation of rules setting standards for licensing and operation of child care facilities should be transferred to and performed by the Child Care Facility Review Board [now the Division of Child Care and Early Childhood Education] and that the Commissioner of the Social Services Division should continue to administer §§ 20-78-201 — 20-78-206, 20-78-208, 20-78-210 — 20-78-216. This transfer may be affected by Acts 1985, No. 348.

Amendments. The 1997 amendment by No. 312 substituted "Senate Interim Committee" for "Joint Committee" in (e).

The 1997 amendment by No. 870 inserted the second and third sentences in (a)(1)(A); and added (a)(1)(B).

The 1997 amendment by No. 1132 substituted "division" for "board" throughout this section; substituted "Arkansas Early Childhood Commission" for "Department of Human Services" in (a)(1); substituted "Division shall" for "board may" in (a)(3); substituted "Division" for "Child Care Facility Review Board" in (d) and (f)(1); in (e), substituted "Senate Committee" for "Joint Committee" and added the language beginning "and the House Subcommittee on Children and Youth."

The 1999 amendment inserted "with the approval of the Arkansas Early Childhood Commission" in (a)(1)(A); substituted "shall review and approve proposed rules and regulations promulgated by the division" for "shall advise the division regarding proposed rules and regulations and, in promulgated by the division" in (a)(1)(C); inserted "and to all" and "approved by the Commission" in (a)(5); rewrote (b); inserted present (c)(1); and made stylistic changes.

20-78-207. Declaratory judgments on licensing rules or regulations.

Any rule or regulation promulgated by the Division of Child Care and Early Childhood Education under authority of § 20-78-206 or under any other child care facility licensing law shall, at the suit of any interested person instituted in the Circuit Court of Pulaski County, be subject to remedies provided by law for obtaining declaratory judgments. However, the division must be named a party defendant and summoned as in an action by ordinary proceedings.

History. Acts 1971, No. 715, § 1; A.S.A. 1947, § 83-917; Acts 1997, No. 1132, § 6.

Cross References. Jurisdiction of circuit courts, Ark. Const. Amend. 80, §§ 6, 19.

Amendments. The 1997 amendment substituted "division" for "board" twice.

20-78-208. Unlicensed child care facility unlawful.

(a) It shall be unlawful for any person, partnership, group, corporation, organization, or association to operate or assist in the operation of a child care facility which has not been licensed by the Division of Child Care and Early Childhood Education.

(b) It shall be unlawful for any person to falsify an application for licensure, to knowingly circumvent the authority of the Child Care Facility Licensing Act, § 20-78-201 et seq., to knowingly violate the orders issued by the division, or to advertise the provision of child care which is not licensed or approved or exempt by the division.

(c) A violation of this section shall be a Class C misdemeanor.

History. Acts 1969, No. 434, § 3; A.S.A. 1947, § 83-903; Acts 1991, No. 888, § 3; 1997, No. 1132, § 7.

substituted "division" for "board" in (a); and substituted "division" for "Child Care Facility Review Board" twice in (b).

Amendments. The 1997 amendment

20-78-209. License — Religious exception.

(a) Any church or group of churches exempt from the state income tax levied by § 26-51-101 et seq. when operating a child care facility shall be exempt from obtaining a license to operate the facility upon the receipt by the Division of Child Care and Early Childhood Education of written request therefor. A written request shall be made by those churches desiring exemption to the division, which is mandated under the authority of this subchapter to license all child care facilities.

(b)(1) In order to maintain an exempt status, the child care facility shall maintain in its files verification that its facility has met the required fire, safety, and health inspections on an annual basis and is in substantial compliance with published standards that similar nonexempt child care facilities are required to meet.

(2) Visits to review and advise exempt facilities shall be made as deemed necessary by the division to verify and maintain substantial compliance with all published standards for nonexempt facilities.

(3) Standards for substantial compliance shall not include those of a religious or curriculum nature so long as the health, safety, and welfare of the child is not endangered.

(4) Standards for corporal punishment shall be as established by present regulations unless alternative compliance is granted by the division.

(c)(1) Any questions of substantial compliance with the published standards, adverse actions, founded licensing complaints, and denied requests for alternative compliance shall be appealed first through the division's internal appeal process and then may be appealed to the Child Care Appeal Review Panel for determination.

(2) Final administrative actions of the division shall be pursued by either party in the court of competent jurisdiction in the resident county of the facility under review.

(3) Challenge to the constitutionality or reasonableness of any regulation or statute may be made prior to any appeal under the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(d) As used in this section, the term "substantial compliance" and as used in §§ 20-78-201 — 20-78-206, 20-78-208, 20-78-210 — 20-78-214, and 20-78-218, the term "is being operated in accordance with this act" shall each mean that a church-operated exempt or a nonexempt child care facility is being operated within the minimum requirements for substantial compliance as promulgated by the division. It is the intent and purpose of this section that the term "substantial compliance" be applicable to all child care facilities.

(e) This section is cumulative to all other acts heretofore enacted.

History. Acts 1983, No. 245, §§ 1-4, 6; A.S.A. 1947, §§ 83-920 — 83-924; Acts 1991, No. 627, § 1; 1997, No. 1132, § 8; 1999, No. 1222, § 11.

Publisher's Notes. Acts 1983, No. 245 provided, in part, that the act did not modify or repeal any of the provisions of Acts 1981, No. 518. However, that act was declared unconstitutional in *Arkansas Day Care v. Clinton*, 577 F. Supp. 388 (E.D. Ark. 1983).

Amendments. The 1997 amendment

substituted "division" for "board" throughout the section; deleted "together with the written verifications required in subsection (b) of this section" in (a); in (b)(1), substituted "shall maintain in their files verification" for "shall state every two (2) years, in written form signed by the persons in charge," inserted "required" following "facility has met the" and inserted "on an annual basis" following "published standards."

The 1999 amendment rewrote (c)(1).

CASE NOTES

Constitutionality.

The exemptions in this section are permissible accommodations to religious beliefs and do not constitute the establishment of religion under the test of *Lemon v.*

Kurtzman, 403 U.S. 602, 91 S. Ct. 2105, 29 L. Ed. 2d 745 (1971) or otherwise violate U.S. Const., Amend. 1 or Amend. 14. *Arkansas Day Care Ass'n v. Clinton*, 577 F. Supp. 388 (E.D. Ark. 1983).

20-78-210. License — Application and issuance.

(a) Any person, partnership, group, corporation, organization, or association desiring to operate a child care facility shall first make

application for a license for a facility to the Division of Child Care and Early Childhood Education on the application forms furnished for this purpose by the division.

(b) The division shall act on any application within sixty (60) days after it has been received by the division.

(c) If an applicant meets the requirements of this subchapter and the published rules and regulations of the division regarding minimum standards for a child care facility, then the applicant shall be granted a license by the division as a child care facility. This license shall continue in effect until revoked or suspended as provided in this subchapter.

(d) In issuing a license for a child care facility, the division may limit the number of children who may be served by that facility.

(e) In issuing an initial license or reviewing a current license for a child care facility, the division shall require that during regular business hours at least one (1) adult member of the staff who is certified in infant and child cardiopulmonary resuscitation shall be present within the physical confines of the child care facility.

History. Acts 1969, No. 434, § 5; A.S.A. 1947, § 83-905; Acts 1991, No. 627, § 2; 1993, No. 493, § 1; 1997, No. 1132, § 9.

Amendments. The 1997 amendment substituted "division" for "board" through-

out the section; deleted "for two (2) years or" preceding "until revoked" in (c); and substituted "issuing an initial license or reviewing a current license" for "issuing or renewing a license" in (e).

CASE NOTES

Cited: McKinley v. Arkansas Dep't of Human Servs., 311 Ark. 382, 844 S.W.2d 366 (1993).

20-78-211. License — Provisional.

(a) If the Division of Child Care and Early Childhood Education finds that an applicant for a child care facility meets the licensing requirements for a child care facility in the main and has a reasonable expectation of correcting deficiencies in a reasonable time, then the division may, in its discretion, issue a provisional license for a child care facility.

(b) The provisional license shall be in effect for a reasonable time, which time shall be specified in the provisional license.

(c) Issuance of provisional licenses shall be in accordance with the published rules and regulations adopted by the division in accordance with this subchapter.

History. Acts 1969, No. 434, § 6; A.S.A. 1947, § 83-906; Acts 1997, No. 1132, § 10.

Amendments. The 1997 amendment

substituted "division" for "board" three times.

20-78-212. License — Nontransferability.

(a) A license for a child care facility shall apply only to the address and location stated on the application and license issued, and it shall not be transferable from one (1) holder of the license to another or from one (1) place to another.

(b) If the location of a child care facility is changed or the owner of the child care facility is changed, then the license for that child care facility shall automatically be revoked upon such a change.

History. Acts 1969, No. 434, § 7; A.S.A. 1947, § 83-907; Acts 1997, No. 1132, § 11.

Amendments. The 1997 amendment substituted "owner" for "operator" in (b).

20-78-213. License — Denial, revocation, or suspension.

(a) The Division of Child Care and Early Childhood Education shall have the power to deny, revoke, or suspend a license for a child care facility if an applicant or licensee has failed to comply with the provisions of this subchapter or any published rule or regulation of the division, subject to appeal before the Child Care Appeal Review Panel.

(b) If a license is denied, revoked, or suspended, the denial, revocation, or suspension shall be effective when made. The division shall notify the applicant or licensee of the action in writing and set out the basis for the denial, revocation, or suspension of the license.

History. Acts 1969, No. 434, § 10; A.S.A. 1947, § 83-910; Acts 1997, No. 1132, § 12; 1999, No. 1222, § 12.

Amendments. The 1997 amendment substituted "division" for "board" three times.

The 1999 amendment, in (a), inserted "of Child Care and Early Childhood Education," and substituted "subject to appeal before the Child Care Appeal Review Panel" for "relating to child care facilities."

CASE NOTES**Revocation of License.**

Where there was substantial evidence to support findings by the Child Care Facility Board that physical punishment was used on children under three years, child records were not maintained, nutritious meals and snacks were not served, a safe outdoor play area was not provided,

adequate and approved sleeping arrangements were not provided, towels for hand washing weren't provided, and no emergency drills were performed, revocation of child care facility's license was upheld. *McKinley v. Arkansas Dep't of Human Servs.*, 311 Ark. 382, 844 S.W.2d 366 (1993).

20-78-214. Inspections and investigations of facilities and personnel — Child abuse.

(a) The Division of Child Care and Early Childhood Education or any other agency of the State of Arkansas which the division asks to assist it is authorized to make an inspection and investigation of any proposed or operating child care facility and of any personnel connected with that facility to the extent that an inspection and investigation is required to determine whether this child care facility will be or is being operated in

accordance with this section and with the published rules and regulations of the division for child care facilities.

(b) However, the division or any other public agency having authority or responsibility with respect to child abuse shall have the authority to investigate any alleged or suspected child abuse in any child care facility. Nothing contained in this section shall be construed to limit or restrict that authority.

History. Acts 1985, No. 697, § 1; A.S.A. 1947, § 83-908.1; Acts 1997, No. 1132, § 13.

substituted "division" for "Child Care Facilities Review Board" throughout the section.

Amendments. The 1997 amendment

20-78-215. Child sexual abuse — Federal funds.

(a)(1) By the enactment of this section, it is the specific intent of the General Assembly to ensure that the State of Arkansas may qualify for the maximum amount of federal funds made available through Pub. L. 98-473 or any subsequent and related federal legislation enacted for use in reducing the incidence of child sexual abuse.

(2) Specifically, regulations promulgated by the Director of the Department of Human Services pursuant to this section may address federally mandated requirements for employment history and background checks and nationwide criminal record checks, as may be necessary in accordance with the provisions of Pub. L. 92-544, for all operators, staff, or employees, or prospective operators, staff, or employees of the child care facilities or programs as defined in this section.

(b) In order to enable the State of Arkansas to fully participate and share in federal funds made available to the states through the Social Services Block Grant Act, or otherwise for the purposes of reducing and eliminating the incidence of child sexual abuse in child care facilities, as defined in § 20-78-202(4), the director is authorized at his or her discretion to promulgate, pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq., rules and regulations implementing such federal requirements as may be placed upon the states to qualify for the funds.

(c) Persons, other than the State of Arkansas, shall not acquire actionable right by virtue of this section.

History. Acts 1985, No. 1050, §§ 1-3; A.S.A. 1947, §§ 83-927 — 83-929; Acts 1997, No. 1132, § 14.

Amendments. The 1997 amendment deleted "including juvenile facilities ... for twenty (20) hours or more per week" following "as defined in § 20-78-202(4)" in (b).

U.S. Code. Public Law 98-473 referred to in this section is codified throughout U.S.C. titles 5, 10, 18, 19, 21, 22, 25, 28, 42, and 48.

Public Law 92-544 is codified throughout U.S.C. titles 22, 28, 36, 42, and 50.

The Social Services Block Grant Act, referred to in this section, is codified as 42 U.S.C. §§ 303, 602, 603, 607, 671, 1301, 1305n, 1308, 1315, 1316, 1320a-3, 1320a-5, 1320a-7, 1353, 1381n, 1382e, 1382h, 1382i, 1397, 1397a-f.

Cross References. Child abuse reporting, § 12-12-501 et seq.

20-78-216. Records and reports.

The Division of Child Care and Early Childhood Education may by published rules and regulations require that a licensed child care facility keep and make available to the division records and periodic reports as shall be necessary to assist the division in determining whether the requirements of this subchapter and of the division's rules and regulations regarding child care facilities are being complied with.

History. Acts 1969, No. 434, § 9; A.S.A. 1947, § 83-909; Acts 1997, No. 1132, § 15. substituted "division for "board" three times; and substituted "division's rules" for "board's rules."

20-78-217. Smoking prohibited.

(a) Whereas, health authorities have established that smoking is not conducive to good health and that children exposed to smoking face a potential health hazard, therefore, it is the intent of the Seventy-Fifth General Assembly to ban smoking in the physical confines of the day care centers licensed by the Division of Child Care and Early Childhood Education.

(b) The division is directed to promulgate sufficient regulations to ensure that state licensing requirements for day care center operations contain a stipulation which bans smoking within the physical confines of each day care center.

History. Acts 1985, No. 862, §§ 1, 2; A.S.A. 1947, §§ 83-925, 83-926; Acts 1997, No. 1132, § 16. Early Childhood Education" for "appropriate division" in (a) and (b).

Amendments. The 1997 amendment substituted "Division of Child Care and Cross References. Public smoking, § 20-27-701 et seq.

20-78-218. Administration of subchapter.

The Division of Child Care and Early Childhood Education shall continue to be the administrative agency to administer the provisions of this subchapter in accordance with the rules, regulations, and standards for the licensing and operation of child care facilities as promulgated by the division.

History. Acts 1987, No. 856, § 1; 1997, No. 1132, § 17. Early Childhood Education" for "Division of Children and Family Services" and substituted "division" for "Child Care Facility Review Board."

Amendments. The 1997 amendment substituted "Division of Child Care and

20-78-219. Fines and penalties — Disposition of funds.

(a) If any licensee fails to pay any monetary fine imposed as a civil penalty within sixty (60) days of the Division of Child Care and Early Childhood Education's decision imposing the penalty, the amount of the fine shall be considered to be a debt owed the State of Arkansas and may be collected by civil action.

(b)(1) All fines and penalties collected under the provisions of this subchapter shall be special revenues to be deposited in the State Treasury to the credit of a special fund to be known as the Child Care Fund, to be used by the division to meet the costs of conducting the statewide criminal records checks required under § 20-78-602 or to provide grants to child care facilities for enhancement of the facility or for training of personnel in child care facilities under the direction of the division.

(2) Subject to those rules and regulations as may be implemented by the Chief Fiscal Officer of the State, the disbursing officer for the Department of Human Services is authorized to transfer all unexpended funds relative to the fines and penalties collected from child care facilities as certified by the Chief Fiscal Officer of the State, to be carried forward and made available for expenditures for the same purpose for any following fiscal year.

History. Acts 1987, No. 856, § 1; 1997, substituted "division's decision" for "board's decision" in (a); and rewrote No. 1132, § 18.

Amendments. The 1997 amendment (b)(1).

20-78-220. Persons or facilities abusing juveniles in their custody.

(a) If a juvenile is found to be abused or neglected due to the acts or omissions of a person other than the parent or guardian of the juvenile, the court may enter an order restraining or enjoining the person or facility employing that person from providing care, training, education, or supervision of juveniles of whom the person or facility is not the parent or guardian.

(b) If the person or facility restrained or enjoined was not subject to this subchapter, the court may order the person or facility to obtain a license from the Division of Child Care and Early Childhood Education as a condition precedent to the person or facility providing care, training, education, or supervision of any juveniles of which the person or facility is not the parent or guardian. If the court so orders, this subchapter shall thereafter apply to the persons or facility subject to the court order.

(c)(1) Information pertaining to child maltreatment is confidential under § 12-12-506.

(2) The division may receive information from any investigative agency on child maltreatment cases conducted within a child care facility and relative to licensure under this subchapter, including specific allegations, a factual description of the investigative findings, and the investigative determination.

(3) The division shall accept the investigative determinations of the appropriate investigative agencies for consideration in any action on child care facility licenses.

History. Acts 1987, No. 745, § 1; 1995, No. 1280, § 16; 1997, No. 1132, § 19.

A.C.R.C. Notes. References to “this subchapter” in the text of §§ 20-78-201—20-78-219 and 20-78-221—20-78-224 may not apply to this section which was enacted subsequently.

Amendments. The 1997 amendment deleted “custody” following “education” in (a) and (b); substituted “division” for “Child Care Facility Review Board” in (b); and rewrote (c)(1) through (c)(3).

Cross References. Juvenile courts and proceedings, § 9-27-101 et seq.

20-78-221. Voluntary registration.

(a) **REGISTRY.** There shall be created a voluntary registry of day care family homes that are not required by § 20-78-201 et seq. to be licensed by the Division of Child Care and Early Childhood Education. The registry shall be maintained by the division.

(b) **PROCEDURE FOR REGISTRATION.** Day care family homes exempt from licensure may voluntarily register the home with the registry established, operated, and maintained by the division. A person wishing to participate in the voluntary registry shall make an application to the division. Upon receipt of the application, the division shall review the applicant’s written application, qualifications, and proposed operation to determine compliance with registry rules and regulations. The division shall issue a certificate of registration to the applicant which authorizes the applicant to operate a registered day care family home only upon final determination of an applicant’s compliance with the rules and regulations established for registration.

(c) **RULES AND REGULATIONS.** (1) The division is authorized to establish rules and regulations that a day care family home shall meet in order to be registered by the Department of Human Services.

(2) The division shall have the right to enter and inspect a registered day care family home if there is reason to believe that the home is in violation of the registry rules and regulations and to ensure compliance with the rules and regulations established by the division.

(d) **REMOVAL OR DENIAL OF REGISTRATION.** If after review of the submitted application, it is determined that the day care family home is not in compliance with the rules and regulations for the registry as established by the division, the division shall immediately deny or remove the home from the registry. Upon removal from the registry, a day care family home may no longer be considered a registered home.

(e) **RIGHT TO APPEAL.** (1) A person whose registration has been denied or who is removed from the voluntary registry due to violation of rules and regulations may appeal the action to the department in accordance with Arkansas law and state rules and regulations.

(2) The appeal does not stay the denial or removal from the registry.

(f) **RENEWAL OF REGISTRATION.** (1) The registration of the day care family home shall continue in effect until removed as provided in this subchapter.

(2) The division shall have the right to investigate and inspect the premises when there is reason to believe that violations exist and to make sure that the home is still in compliance with the rules and regulations established for the voluntary registry of day care family homes.

(g) **SURRENDER OF REGISTRATION.** At any time, the owner of the registered day care family home may voluntarily surrender his or her certificate of registration. Upon surrender, that home shall be removed from the registry of day care family homes operated by the division.

History. Acts 1989, No. 46, § 1; 1997, No. 1132, § 20.

Amendments. The 1997 amendment substituted "division" for "department" throughout the section; inserted "Division of Child Care and Early Childhood Education" in (b) and (g); in (a), substituted "division" for "Child Care Facility Review

Board" and substituted "Child Care and Early Childhood Education" for "Children and Family Services"; in (f), substituted "shall continue in effect until removed as provided in this subchapter" for "shall be renewed every two (2) years" and substituted "division" for "Department of Human Services."

20-78-222. Continuing education.

(a)(1) All persons employed by a child care facility who work directly with children shall receive at least ten (10) hours per year of continuing early childhood education as approved by the Division of Child Care and Early Childhood Education.

(2) Topics appropriate for continuing early childhood education shall include, but not be limited to, the following:

- (A) Child growth and development;
- (B) Nutrition and food service;
- (C) Parental communication and involvement;
- (D) Curricula and curriculum development;
- (E) Developmentally appropriate practice and learning environments;
- (F) Behavior management;
- (G) Emergency care and first aid; and
- (H) Administration and management of early childhood programs.

(b) Evidence satisfactory to the division of each employee's completion within the past twelve (12) months of continuing education shall be maintained by the facility as part of the facility's personnel records.

(c) The failure of a child care facility to comply with this requirement shall be grounds for the denial, revocation, or suspension of a license issued pursuant to this subchapter.

History. Acts 1993, No. 900, § 1; 1995, No. 594, § 1; 1997, No. 1132, § 21.

Amendments. The 1997 amendment substituted "division" for "board" through-

out the section; and substituted "twelve (12) months" for "twenty-four (24) months" in (b).

20-78-223. License fees — Disposition.

(a) The Division of Child Care and Early Childhood Education shall not issue or maintain a license to a child care facility unless the license fee is paid at the annual licensing or renewal date. The license fee is:

(1) Fifteen dollars (\$15.00) per year for child care facilities serving fewer than seventeen (17) children;

(2) Fifty dollars (\$50.00) for child care facilities serving seventeen (17) to ninety-nine (99) children; and

(3) One hundred dollars (\$100) per year for child care facilities serving one hundred (100) or more children.

(b) The division shall transmit the fees monthly to the Treasurer of State to be deposited as special revenues in the Child Care Fund.

History. Acts 1997, No. 1132, § 22.

20-78-224. Child Care Fund.

(a) There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State, the Child Care Fund, to be administered by the Division of Child Care and Early Childhood Education.

(b) The division shall certify each month the amount of fees collected and deposited to the fund and shall transmit, from funds appropriated for the maintenance and operation of the division, an amount of money equal to one-half ($\frac{1}{2}$) of the fees transmitted to the Treasurer of State.

History. Acts 1997, No. 1132, § 22.

SUBCHAPTER 3 — AGREEMENTS WITH ADJOINING STATES

SECTION.

20-78-301. Purpose.

20-78-302. Authority to enter agreements.

SECTION.

20-78-303. Requirements of agreements.

20-78-304. Attorney General approval.

20-78-305. Status of agreements.

Publisher's Notes. Former subchapter 3, concerning the Arkansas Child Sexual Abuse Commission, was repealed by Acts 1991, Nos. 727 and 828, §§ 5. The former subchapter was derived from the following sources:

20-78-301. Acts 1985, No. 735, § 1; A.S.A. 1947, § 41-4211.

20-78-302. Acts 1985, No. 735, §§ 1, 4; A.S.A. 1947, §§ 41-4211, 41-4214.

20-78-303. Acts 1985, No. 735, § 6; A.S.A. 1947, § 41-4216.

20-78-304. Acts 1985, No. 735, § 1; A.S.A. 1947, § 41-4211.—

20-78-305. Acts 1985, No. 735, § 2; A.S.A. 1947, § 41-4212.

20-78-306. Acts 1985, No. 735, § 3; A.S.A. 1947, § 41-4213.

20-78-307. Acts 1985, No. 735, § 5; A.S.A. 1947, § 41-4215.

20-78-308. Acts 1985, No. 735, § 7; A.S.A. 1947, § 41-4217.

20-78-309. Acts 1985, No. 735, § 8; A.S.A. 1947, § 41-4218.

20-78-301. Purpose.

It is the purpose of this subchapter to permit the Division of Children and Family Services to cooperate with public agencies or private nonprofit organizations of adjoining states to provide services for residents of Arkansas that are in need of regular or therapeutic child care.

History. Acts 1997, No. 939, § 1.

20-78-302. Authority to enter agreements.

Subject to the conditions and limitations contained in this subchapter, the Division of Children and Family Services may enter into agreements with public agencies, private nonprofit organizations or combinations thereof from adjoining states for the purpose of performing the responsibility to the residents of Arkansas that are in need of regular or therapeutic child care. This includes financial participation, using any funds that are at its disposal, to the extent that similar services would be performed within the state.

History. Acts 1997, No. 939, § 2.

20-78-303. Requirements of agreements.

Every agreement or contract entered into in accordance with this subchapter shall specify the following:

- (a) Full names and addresses of all parties to the agreement;
- (b) The precise organization, composition, and nature of legal or the administrative entity that will be providing services together with its powers and limitations and the manner of acquiring, holding and disposing of real and personal property used in the joint or cooperative undertaking;
- (c) A description of the joint or cooperative undertaking that specifies the duties and responsibilities of all parties to the agreement;
- (d) The manner of financing the joint or cooperative undertaking and of establishing and maintaining a budget thereof, or in the case whereby one of the participants agrees to furnish specified services, the financial arrangements therefor;
- (e) The permissible method or methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such a partial or complete termination; and
- (f) Any other necessary and proper methods.

History. Acts 1997, No. 939, § 3.

20-78-304. Attorney General approval.

Every agreement made hereunder shall, prior to and as a condition precedent to its entry into force, may at the discretion of the Division of Children and Family Services, be submitted to the Attorney General, who shall determine whether the agreement is in proper form and compatible with the laws of this state. The Attorney General shall approve any agreement submitted to him or her hereunder unless he or she shall find that it does not meet the conditions set forth herein and shall detail in writing addressed to the division and the governing bodies concerned with the agreement the specific respects in which the proposed agreement fails to meet the requirements of law. Failure to

disapprove an agreement submitted hereunder within twenty (20) days of its submission shall constitute approval thereof.

History. Acts 1997, No. 939, § 4.

20-78-305. Status of agreements.

Every agreement or contract entered into pursuant to this subchapter shall have the status of an interstate compact.

History. Acts 1997, No. 939, § 5.

SUBCHAPTER 4 — CHILD CARE PROVIDERS' TRAINING COMMITTEE

SECTION.

20-78-401 — 20-78-406. [Repealed.]

20-78-401 — 20-78-406. [Repealed.]

Publisher's Notes. This subchapter was repealed by Acts 1997, No. 1132, § 23. The subchapter was derived from the following sources:

20-78-401. Acts 1987, No. 588, §§ 1, 2; 1995, No. 1280, § 1; 1997, No. 250, § 206.

20-78-402. Acts 1987, No. 588, § 5; 1995, No. 1280, § 2.

20-78-403. Acts 1987, No. 588, § 4; 1995, No. 1280, § 3.

20-78-404. Acts 1987, No. 588, §§ 3, 4; 1995, No. 1280, § 4.

20-78-405. Acts 1987, No. 588, § 6; 1995, No. 1280, § 5.

20-78-406. Acts 1987, No. 588, § 7; 1995, No. 1280, § 6.

For present law, see §§ 20-78-201 et seq. and 20-78-501 et seq.

Pursuant to § 1-2-207, the amendment to § 20-78-401 by Acts 1997, No. 250 was deemed superseded by the repeal of this subchapter by Acts 1997, No. 1132.

SUBCHAPTER 5 — EARLY CHILDHOOD COMMISSION

SECTION.

20-78-501. Creation — Composition — Meetings.

20-78-502. Duties — Assistance.

20-78-503. Arkansas Child Care Facilities Loan Guarantee Trust Fund.

SECTION.

20-78-504. Moneys for Arkansas Child Care Facilities Loan Guarantee Trust Fund.

20-78-505. Loan guarantees — Annual report.

20-78-506. Criteria for grant approval.

Effective Dates. Acts 1989, No. 202, § 4: July 1, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that expanded development and coordination of early childhood programs is essential to meeting the developmental and educational needs at young children in Arkansas. Therefore, an emergency is hereby declared and this Act being necessary for the immediate preservation of the public

peace, health, and safety shall be in full force and effect of July 1, 1989."

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which

are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1999, No. 1222, § 21: Apr. 8, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly, that it is essential to the effective and efficient administra-

tion of the Child Care Licensing program that the responsibility for reviewing appeals be placed in the Child Care Appeal Review Panel under the Department of Human Services, as soon as possible and that this act is designed to accomplish this purpose and should be given effect immediately. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval of the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

20-78-501. Creation — Composition — Meetings.

(a)(1) There is hereby established the Arkansas Early Childhood Commission, to be composed of eighteen (18) members.

(2) The chair of the commission shall be selected annually by majority vote of the commission.

(b) The following members of the commission shall be appointed by the Governor, subject to confirmation by the Senate:

(1) Three (3) members affiliated with child care provider agencies, organizations, or programs;

(2) One (1) member affiliated with a Head Start program;

(3) One (1) member affiliated with a Home Instruction Program for Preschool Youngsters;

(4) One (1) member employed as an administrator by a public school district;

(5) One (1) member employed by a public school district as a teacher with early childhood responsibilities;

(6) The Director of the Department of Health or his or her designee;

(7) One (1) member trained as an early childhood education professional;

(8) One (1) member who is a parent of a child who attends a child care program;

(9) The Director of the Department of Workforce Education or its successor or his or her designee;

(10) The Director of the Department of Education or his or her designee; and

(11) Two (2) members representing the business community who have an interest in early childhood education.

(c) The members identified in subsection (b) of this section shall serve three-year terms, and the terms shall begin on July 1.

(d)(1) One (1) member shall be appointed by and serve at the pleasure of the chair of the Subcommittee on Children and Youth of the House Committee on Aging, Children and Youth, Legislative and Military Affairs.

(2) One (1) member shall be appointed by and serve at the pleasure of the chair of the Senate Committee on Children and Youth.

(3) One (1) member shall be appointed by and serve at the pleasure of the chair of the House Committee on Education.

(4) One (1) member shall be appointed by and serve at the pleasure of the chair of the Senate Committee on Education.

(e)(1) The commission shall meet at least quarterly and at such other times as may be deemed necessary for the performance of the duties of the commission.

(2) Special meetings of the commission may be called by the chair or by agreement of a majority of the members of the commission.

(f)(1) The members of the commission shall serve without compensation or per diem but shall be entitled to reimbursement for actual expenses incurred in the performance of duties as members of the commission. Expense reimbursement shall be in accordance with state travel and official business expense reimbursement procedures and regulations.

(2) Expense reimbursement shall be paid from funds appropriated to the Division of Child Care and Early Childhood Education for this purpose.

(g) The commission shall report annually to the House Committee on Education and the Senate Committee on Education as set out in § 20-78-502.

History. Acts 1989, No. 202, § 1; 1997, No. 250, § 207; 1997 No. 1132, § 24; 1999, No. 324, § 1; 1999, No. 1560, § 1; 2001, No. 1288, § 18.

A.C.R.C. Notes. Pursuant to § 1-2-207, this section is set out above as amended by Acts 1997, No. 1132. Former subsection (d) was amended by Acts 1997, No. 250 to read as follows: "(d) The members of the commission shall serve without compensation or per diem but may receive expense reimbursement in accordance with § 25-16-901 et seq."

Acts 1999, No. 324, § 1 also provided in part: "Members of the commission serving on the effective date of this act, except those members whose positions have been eliminated by this act, shall continue to serve out their terms."

Publisher's Notes. Acts 1989, No. 202, § 1, provided, in part, that, in making the

initial appointments to the commission, the Governor shall designate five (5) members to serve one-year terms, seven (7) members to serve two-year terms, and five (5) members to serve three terms and that the Governor shall designate one (1) of the initial members as chair of the commission, to serve a one-year term.

Acts 1989, No. 202, § 1, as enacted, provided, in (a): "Effective July 1, 1990, the chairman of the commission shall be elected annually by majority vote of the commission."

Amendments. The 1997 amendment substituted "eighteen (18) members" for "seventeen (17) members" in (a); rewrote (b); substituted "Division of Child Care and Early Childhood Education" for "General Education Division of the Department of Education" in (d); and added (e).

The 1999 amendment by No. 324 reded-

ignated former (b)(13)-(16) as present (b)(12)-(15); added present (e); and made stylistic changes.

The 1999 amendment by No. 1560 redesignated former (b)(13)-(16) as present (b)(12)-(15); substituted "is a parent" for "are parents" in (b)(8); in present (b)(12)-

(15), substituted "One (1) member to be appointed by the chair" for "The chair," and deleted "or the chair's designee" at the end; and made stylistic changes.

The 2001 amendment rewrote the section.

20-78-502. Duties — Assistance.

(a) The Arkansas Early Childhood Commission shall have the following duties and responsibilities and shall annually report its progress toward the following:

(1) Advising the Division of Child Care and Early Childhood Education on the administration of the Arkansas Child Care Facilities Loan Guarantee Trust Fund;

(2) Providing technical assistance in the design of training programs to enhance the skills of professionals in early childhood programs, including the development of an annual comprehensive training plan for providers;

(3) Examining the recommendations of national and regional groups and systems producing scientifically proven and cost-effective results used by others to provide child care and early childhood services;

(4) Assisting in the development of a comprehensive long-range plan for the expansion, development, and implementation of early childhood programs in Arkansas, including recommending the allocation and expenditures of funds appropriated to the Arkansas Better Chance Program;

(5) Facilitating coordination and communication among state agencies providing early childhood programs in order to promote nonduplication and coordination of services in the programs and recommending a structure for the administration of the currently existing programs and the recommended programs;

(6) Advising the Department of Education and other appropriate state agencies on the development of programmatic standards for early childhood programs to be funded with funds appropriated to the department or to such other state agencies as may receive appropriations for such purposes;

(7) Promoting strong local community support for early childhood education programs;

(8) Promoting public awareness of child care and early childhood programs;

(9) From the applications submitted, making Child Care Appeal Review Panel selections from persons who meet the qualifications for service and who exhibit a willingness and time commitment to serve on the panel; and

(10) Approving all rules and regulations promulgated by the division.

(b) The division shall assist the commission in carrying out its duties and responsibilities.

History. Acts 1989, No. 202, § 1; 1997, No. 1132, § 25; 1999, No. 324, § 2; 1999, No. 1222, § 13.

A.C.R.C. Notes. Acts 1997, No. 1132, § 41, provided: "That part of the General Education Division of the Department of Education pertaining to operations of the Early Childhood Commission, including only the two percent (2%) administrative component of the Better Chance Program, is hereby transferred by a Type 2 transfer as provided in § 25-2-105 to the Department of Human Services, Division of Child Care and Early Childhood Education."

Amendments. The 1997 amendment rewrote (a)(1) and (2); substituted "Assist in development of" for "Develop" in (a)(3);

deleted former (a)(8) and (9); and rewrote (b).

The 1999 amendment by No. 324 added "and shall annually report its progress toward the following" in (a); inserted present (a)(3) and redesignated former (a)(3)-(7) as present (a)(4)-(8); added "and recommend a structure for the administration of the currently existing programs and the recommended programs" in present (a)(5); and deleted "General Education Division of the" preceding "Department of Education" in present (a)(6); and made stylistic changes.

The 1999 amendment by No. 1222 added "panel" at the end of present (a)(9); added (a)(10); and made stylistic changes.

20-78-503. Arkansas Child Care Facilities Loan Guarantee Trust Fund.

(a) There is established a cash fund account of the Division of Child Care and Early Childhood Education to be known as the Arkansas Child Care Facilities Loan Guarantee Trust Fund. This cash fund account is to be maintained in one (1) or more financial institutions of the state and shall be administered in accordance with this subchapter.

(b) The division is hereby authorized to accept moneys for the fund from any source, including, but not limited to, allocations from the Treasurer of State as provided in § 20-78-504.

(c) The fund shall be a continuing fund, not subject to fiscal year limitations, and shall be used to guarantee loans for the expansion or development of child care facilities in this state and as provided in subsection (d) of this section.

(d) Any interest at the end of the fiscal year which exceeds the amount necessary to cover loan defaults occurring during that fiscal year shall be made available for professional development and quality improvement activities and grants.

(e) This fund shall be administered by the division with technical assistance from the Arkansas Early Childhood Commission and the Arkansas Development Finance Authority.

History. Acts 1989, No. 202, § 1; 1997, No. 540, § 43; 1997, No. 1132, § 26; 2001, No. 305, § 1.

A.C.R.C. Notes. Pursuant to § 1-2-207, this section is set out above as amended by Acts 1997, No. 1132. The 1997 amendment by No. 540 substituted "Arkansas Economic Development Commission" for "Arkansas Industrial Development Commission" in former (e).

Amendments. The 1997 amendment substituted "Division of Child Care and

Early Childhood Education" for "Arkansas Early Childhood Commission" in (a); substituted "division" for "commission" in (b); inserted "training scholarships" in (d); and rewrote (e).

The 2001 amendment, in (d), substituted "professional development and quality improvement activities and grants" for "nonrefundable grants to child care facilities for start up, development, training scholarships, or expansion."

20-78-504. Moneys for Arkansas Child Care Facilities Loan Guarantee Trust Fund.

(a)(1) After providing for the exclusion of the interest income classified as special revenues as authorized by § 15-41-110 and § 27-70-204, and for the first two million dollars (\$2,000,000) of interest income received each fiscal year by the Treasurer of State as authorized in § 15-5-422, the next one hundred thousand dollars (\$100,000) of interest income received each fiscal year in the State Treasury beginning with the fiscal year commencing July 1, 1989, and continuing as set forth in subsection (b) of this section from the investment of state funds as authorized by the State Treasury Management Law, § 19-3-501 et seq., is declared to constitute cash funds restricted in their use and dedicated to be used solely as authorized in § 20-78-503.

(2) The cash funds as received by the Treasurer of State shall not be deposited in or deemed to be a part of the State Treasury for purposes of Arkansas Constitution, Article 5, § 29; Arkansas Constitution, Article 16, § 12; Arkansas Constitution, Amendment 20; or any other constitutional or statutory provision. The Treasurer of State shall pay the cash funds to the Division of Child Care and Early Childhood Education for depositing those amounts in the Arkansas Child Care Facilities Loan Guarantee Trust Fund for the purposes authorized by § 20-78-503.

(3) The interest earnings transferred directly to the division are declared to be cash funds restricted in their use and dedicated to be used solely as authorized in § 20-78-503.

(b) The Treasurer of State shall continue to pay the cash funds as authorized in subsection (a) of this section until the balance of the fund reaches three hundred fifty thousand dollars (\$350,000). After that time, the division shall review the fund balance at least quarterly and report to the Treasurer of State when the balance reaches or falls below one hundred thousand dollars (\$100,000). At that time, the Treasurer of State shall again pay cash funds as authorized in subsection (a) of this section until the balance of the fund reaches three hundred fifty thousand dollars (\$350,000).

History. Acts 1989, No. 202, § 1; 1997, No. 1132, § 27.

Amendments. The 1997 amendment substituted "Division of Child Care and

Early Childhood Education" for "Arkansas Early Childhood Commission" in (a) and (b); and substituted "division" for "commission" in (a).

20-78-505. Loan guarantees — Annual report.

(a) The Division of Child Care and Early Childhood Education is authorized to develop and implement, with the technical assistance of the Arkansas Early Childhood Commission, necessary rules and regulations to receive, review, and approve applications for loan deficiency guarantee assistance for expansion or development of child care facilities in this state.

(b) The maximum loan guarantee amount approved by the division shall be modified as necessary to ensure adequate child care financing availability.

(c) In guaranteeing loans under this subchapter, consideration shall be given to:

- (1) Geographic distribution;
- (2) Community need;
- (3) Community income, with priority given to those communities with the lowest median family income;
- (4) Proof of viable administrative and financial management; and
- (5) Intended licensure of the facility.

(d) The division shall report each October to the Legislative Council on the status of the Arkansas Child Care Facilities Loan Guarantee Trust Fund.

History. Acts 1989, No. 202, § 1; 1997, No. 540, § 44; 1997, No. 1132, § 28.

A.C.R.C. Notes. Pursuant to § 1-2-207, this section is set out above as amended by Acts 1997, No. 1132. Former subsection (a) was amended by Acts 1997, No. 540 to substitute "Arkansas Economic

Development Commission" for "Arkansas Industrial Development Commission."

Amendments. The 1997 amendment rewrote (a) and (b); deleted former (c)(6) and made related changes in (c)(5); and substituted "division" for "commission" in (d).

20-78-506. Criteria for grant approval.

The Division of Child Care and Early Childhood Education is authorized to develop and implement criteria for grant approval of interest moneys to be used as authorized in § 20-78-503(d).

History. Acts 1989, No. 202, § 1; 1997, No. 1132, § 29; 2001, No. 305, § 2.

Amendments. The 1997 amendment substituted "division" for "Arkansas Early Childhood Commission."

The 2001 amendment substituted "Division of Child Care and Early Childhood Education" for "division."

SUBCHAPTER 6 — BACKGROUND CHECKS OF CHILD CARE FACILITY LICENSEES AND EMPLOYEES

SECTION.

- 20-78-601. Child abuse central registry check — Owners, operators, and prospective employees in licensed or church-operated exempt facilities.
- 20-78-602. Criminal records check.

SECTION.

- 20-78-603. [Repealed.]
- 20-78-604. Qualifications for child care ownership, operation, or employment.
- 20-78-605. Definitions — Volunteers' records check.

Effective Dates. Acts 1995, No. 1280, § 20: Apr. 13, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the immediate

effectiveness of this act is essential to the safety and well-being of Arkansas children who are cared for in child care facilities. Therefore, an emergency is hereby declared to exist and this act being neces-

sary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval.”

Acts 1997, No. 1198, § 8: Apr. 8, 1997. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the immediate effectiveness of this Act is essential to the safety and well-being of Arkansas children who are cared for in child care facilities. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

Acts 1999, No. 1222, § 21: Apr. 8, 1999.

Emergency clause provided: “It is hereby found and determined by the Eighty-second General Assembly, that it is essential to the effective and efficient administration of the Child Care Licensing program that the responsibility for reviewing appeals be placed in the Child Care Appeal Review Panel under the Department of Human Services, as soon as possible and that this act is designed to accomplish this purpose and should be given effect immediately. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval of the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

20-78-601. Child abuse central registry check — Owners, operators, and prospective employees in licensed or church-operated exempt facilities.

(a)(1) All applicants for a church-operated exemption or a license to own or operate a child care facility shall be checked with the child abuse central registry for reports of child maltreatment upon application for the license or church-operated exemption and every two (2) years thereafter.

(2) All employees or conditional employees in licensed child care facilities or facilities operating with a church-operated exemption shall be checked with the registry for reports of child maltreatment prior to hire and every two (2) years thereafter.

(b) The Division of Child Care and Early Childhood Education shall have the authority to deny a license or church-operated exemption to any applicant found to have any record of founded child maltreatment in the official record of the registry.

(c) Any person employed in a licensed child care facility found to have any record of child maltreatment in the official record of the registry shall be reviewed by the owner or operator of the facility in consultation with the division to determine appropriate corrective action measures, which would include, but are not limited to, training, probationary employment, or nonselection for employment. The division shall also have the authority to deny a license or church-operated exemption to an applicant who continues to employ a person with any record of founded child maltreatment.

History. Acts 1993, No. 1293, § 1; 1995, No. 1280, § 7; 1997, No. 1132, § 30; 1997, No. 1198, § 1.

Amendments. The 1997 amendment by No. 1132 substituted "division" for "Child Care Facility Review Board" in (b)

and (c); and substituted "division" for "board" in the first sentence of (c).

The 1997 amendment by No. 1198 re-wrote this section.

Cross References. Central registry, § 12-12-505.

20-78-602. Criminal records check.

(a) **CRIMINAL RECORDS CHECK — OWNERS AND OPERATORS.** (1)(A) Each applicant for a license to own or operate a child care facility shall be required to apply to the Bureau of Identification and Information for a statewide criminal records check and a nationwide criminal records check, the latter to be conducted by the Federal Bureau of Investigation.

(B) The nationwide criminal records check shall conform to the applicable federal standards and shall include the taking of fingerprints.

(C) The applicant shall sign a release of information and shall be responsible for the payment of any fee associated with the nationwide criminal records check. The applicant shall not be assessed a fee for the statewide criminal records check.

(2) In the event that a legible set of fingerprints as determined by the Bureau of Identification and Information and the Federal Bureau of Investigation cannot be obtained after a minimum of three (3) attempts, the Division of Child Care and Early Childhood Education shall determine eligibility for employment based upon a name check by the Bureau of Identification and Information and the Federal Bureau of Investigation.

(3) Upon completion of the criminal records checks, the Bureau of Identification and Information shall forward all information obtained concerning the applicant for a license to the division.

(b) **CRIMINAL RECORDS CHECK — EMPLOYEES.** (1)(A)(i) Any employee or conditional employee if that employment involves supervisory or disciplinary power over a child or children or involves contact with a child or children in any child care facility which is required to be licensed by the division who has not been a resident of the State of Arkansas for the preceding six (6) years, shall apply to the Bureau of Identification and Information for a statewide criminal records check and a nationwide criminal records check to be conducted through the Federal Bureau of Investigation.

(ii) The nationwide criminal records check shall conform to the applicable federal standards and shall include the taking of fingerprints.

(iii) Upon applying for a criminal records check, the person shall sign a release of information and shall be responsible for the payment of any fee associated with the nationwide criminal records check. The applicant shall not be assessed a fee for the statewide criminal records check.

(B) In the event that a legible set of fingerprints as determined by the Bureau of Identification and Information and the Federal Bureau of Investigation cannot be obtained after a minimum of three (3) attempts, the division shall determine eligibility for employment based upon a name check by the Bureau of Identification and Information and the Federal Bureau of Investigation.

(C)(i) Any employee, if that employment involves supervisory or disciplinary power over a child or children or involves contact with a child or children, in any child care facility which is required to be licensed by the division and who has been a resident of the State of Arkansas for the preceding six (6) years, shall only be required to apply to the Bureau of Identification and Information for a statewide criminal records check.

(ii) The applicant shall not be assessed a fee for the statewide criminal records check.

(2) Upon completion of a criminal records check, the Bureau of Identification and Information shall forward all information obtained concerning the employee or conditional employee in a child care facility to the division.

(3)(A) The owner or operator of a child care facility shall maintain on file, subject to inspection by the division, evidence that criminal records checks have been initiated on all current employees hired on or after September 1, 1993, and the results of the checks.

(B) Failure to maintain that evidence on file will be prima facie grounds to revoke the license of the owner or operator of the child care facility.

(c) PROCEDURES GENERALLY. (1) Each applicant for a license to own or operate a child care facility and each employee in any child care facility required to be licensed by the division shall complete a criminal records check form developed by the Department of Human Services and shall sign the form under oath before a notary public.

(2) The owner or operator of the child care facility shall submit the criminal records check form to the division for processing within ten (10) days of hiring the employee, who shall remain under conditional employment until the child abuse central registry check and criminal records checks required under this subchapter are completed.

(3) Nothing in this section shall be construed to prevent the division from denying a license to an owner or preventing an operator or employee in a child care facility from having unsupervised access to children by reason of the pending status of a criminal prosecution or pending appeal of a child maltreatment determination.

(d) FALSE SWEARING. (1) An owner or operator of a child care facility shall not be liable during a conditional period of employment for hiring an employee who may be subject to a charge of false swearing upon completion of registry and criminal records checks.

(2)(A) Pursuant to this subchapter, false swearing shall occur when a person while under oath provides false information or omits information that the person knew or should reasonably have known was material.

(B) Lack of knowledge that information is material is not a defense to a charge of false swearing.

(3) For purposes of this subchapter, false swearing is a Class A misdemeanor.

(e) **REPEAT CHECKS.** (1) After the initial checks, licensed owners or operators of child care facilities and all child care facility employees shall reapply every five (5) years to the Bureau of Identification and Information for a statewide criminal records check, the results of which, upon completion, shall be forwarded to the division.

(2) The applicants shall not be assessed a fee for the statewide criminal records check required under this subsection.

(f) **CHURCHES.** All applicants for a church-operated exemption and their employees shall comply with this section, in addition to applicants for a license to own or operate a child care facility and their employees.

History. Acts 1993, No. 1293, §§ 2, 3; 1995, No. 1280, § 8; 1997, No. 1132, § 31; 1997, No. 1198, § 2; 1999, No. 1222, §§ 14, 15.

Amendments. The 1997 amendment by No. 1132 substituted "division" for "board" in (b)(1)(A) and (b)(1)(C), (b)(3), and (c)(1); substituted "division" for "Child Care Facility Review Board" in (a)(2), (b)(2) and (e)(1); and substituted "division" for "department" in (c)(2).

The 1997 amendment by No. 1198 added (a)(2) and redesignated the former

(2) as (3); added (b)(1)(B) and redesignated the former (B) as (C); added "Procedures Generally" as the catchline of (c), and added (c)(3); added "Repeat Checks" as the catchline of (e); and added (f).

The 1999 amendment, in (a)(2), substituted "Division of Child Care and Early Childhood Education" for "Child Care Facilities Review Board" and inserted "for employment"; in (b)(1)(B), substituted "the division shall" for "the Child Care Facilities Review Board will"; and made stylistic changes.

20-78-603. [Repealed.]

Publisher's Notes. This section, concerning destruction of fingerprint records, was repealed by Acts 1995, No. 1280, § 9.

The section was derived from Acts 1993, No. 1293, § 4.

20-78-604. Qualifications for child care ownership, operation, or employment.

(a) Without proof of rehabilitation as provided in subsection (b) of this section, no person shall be eligible to be a child care facility owner, operator, or employee in a licensed or church-operated exempt facility if that person has pleaded guilty or nolo contendere or has been found guilty of any of the following offenses by any court in the State of Arkansas or of any similar offense by a court in another state or of any similar offense by a federal court:

- (1) Capital murder as prohibited in § 5-10-101;
- (2) Murder in the first and second degrees as prohibited in §§ 5-10-102 and 5-10-103;
- (3) Manslaughter as prohibited in § 5-10-104;
- (4) Battery in the first and second degrees as prohibited in §§ 5-13-201 and 5-13-202;
- (5) Aggravated assault as prohibited in § 5-13-204;

(6) Terroristic threatening in the first degree as prohibited in § 5-13-301;

(7) Kidnapping as prohibited in § 5-11-102;

(8) False imprisonment in the first degree as prohibited in § 5-11-103;

(9) Permanent detention or restraint as prohibited in § 5-11-106;

(10) Rape and carnal abuse in the first and second degrees as prohibited in §§ 5-14-103, 5-14-104 [repealed], and 5-14-105 [repealed];

(11) Sexual abuse in the first and second degrees as prohibited in §§ 5-14-108 [repealed] and 5-14-109 [repealed];

(12) Violation of a minor in the first and second degrees as prohibited in §§ 5-14-120 [repealed] and 5-14-121 [repealed];

(13) Incest as prohibited in § 5-26-202;

(14) Endangering the welfare of a minor in the first degree as prohibited in § 5-27-203;

(15) Permitting child abuse as prohibited in § 5-27-221(a)(1) and (a)(3);

(16) Engaging children in sexually explicit conduct for use in visual or print media, transportation of minors for prohibited sexual conduct, or use of a child or consent to use of a child in a sexual performance by producing, directing, or promoting a sexual performance by a child as prohibited in §§ 5-27-303, 5-27-305, 5-27-402, and 5-27-403;

(17) Distribution to minors as prohibited in § 5-64-406;

(18) Manufacture, delivery, or possession with intent to manufacture or deliver any controlled substance as prohibited in § 5-64-401;

(19) Carnal abuse in the third degree as prohibited in § 5-14-106 [repealed];

(20) Sexual solicitation of a child as prohibited in § 5-14-110;

(21) Pandering or possessing visual or print medium depicting sexually explicit conduct involving a child as prohibited by § 5-27-304;

(22) Negligent homicide as prohibited by § 5-10-105;

(23) Assault in the first degree as prohibited by § 5-13-205;

(24) Coercion as prohibited by § 5-13-208;

(25) Sexual misconduct as prohibited by § 5-14-107 [repealed];

(26) Public sexual indecency as prohibited by § 5-14-111;

(27) Indecent exposure as prohibited by § 5-14-112;

(28) Endangering the welfare of a minor in the second degree as prohibited by § 5-27-204;

(29) Any felony or any misdemeanor involving violence or sexual misconduct; and

(30) Criminal attempt, criminal solicitation, or criminal conspiracy as prohibited in §§ 5-3-201, 5-3-202, 5-3-301, and 5-3-401 to commit any of the offenses listed in this section.

(b)(1) Any person pleading guilty or nolo contendere or found guilty of any of the offenses listed in subsection (a) of this section shall be absolutely disqualified to be an owner, operator, or employee in a child care facility, licensed or church-operated exempt, during the period of that person's confinement, probation, or parole.

(2)(A) Any person pleading guilty or nolo contendere or found guilty of any of the offenses listed in subsection (a) of this section shall be presumed to be disqualified to be an owner, operator, or employee in a child care facility, licensed or church-operated exempt, after the completion of that person's term of confinement, probation, or parole.

(B)(i)(a) The applicant to own, operate, or be an employee in a licensed or church-operated exempt facility must petition the Division of Child Care and Early Childhood Education to make a determination that five (5) years have passed since the date of conviction or plea of guilty or nolo contendere and that the applicant does not pose a risk of harm to any person served by the facility.

(b) The applicant shall bear the burden of making that showing.

(ii) The division, in its discretion, may permit the applicant to own, operate, or be an employee in a child care facility, licensed or church-operated exempt, upon making a determination that five (5) years have passed since the date of conviction or plea of guilty or nolo contendere and that the applicant does not pose a risk of harm to any person served by the facility.

History. Acts 1993, No. 1293, § 5; 1995, No. 1280, § 10; 1997, No. 1132, § 32; 1997, No. 1198, § 3.

A.C.R.C. Notes. Pursuant to § 1-2-207, this section is set out above as amended by Acts 1997, No. 1198. Former subsection (b) was amended by Acts 1997, No. 1132 to read as follows: "Any person pleading guilty or nolo contendere or found guilty of any of the offenses listed in subsection (a) of this section who can demonstrate rehabilitation, where more than five (5) years have passed since the

person was released from confinement, probation, or parole, may petition the division that he is qualified to be a child care facility owner, operator, or employee. The division is authorized to determine when a petitioner has been rehabilitated sufficiently to be a child care facility owner, operator, or employee."

Amendments. The 1997 amendment in (a) inserted "in a licensed or church-operated exempt facility" following "owner, operator, or employee"; rewrote (a)(20); added (a)(21) —(30); and rewrote (b).

20-78-605. Definitions — Volunteers' records check.

As used in this subchapter, unless the context otherwise requires:

(1) "Employee" means a person in the service of a child care facility other than a person providing auxiliary services under a professional license, whether full-time or part-time and whether employed by contract or at will, in which the employer has authority to control the person in the material details of how work will be performed and when compensation will be provided and:

(A) Compensation will be provided; or

(B) The person is a volunteer who has supervisory or disciplinary control over children or who is left alone with children;

(2) "Operator" means any person who is responsible for managing day-to-day operation of a child care facility;

(3) "Owner" means any person who assumes the legal responsibility for operation of a child care facility by signing the application for a license or for an exemption; and

(4)(A) “Volunteer” means a person who provides his or her services without any express or implied promise of compensation.

(B)(i) Volunteers who are not left alone with children or who do not have disciplinary control over children in child care facilities shall not be required to have criminal records checks.

(ii) All volunteers shall be checked with the child abuse central registry for reports of child maltreatment.

History. Acts 1995, No. 1280, § 11; 1997, No. 1198, § 4. **Amendments.** The 1997 amendment rewrote the section.

SUBCHAPTER 7 — PRENATAL AND EARLY CHILDHOOD NURSE HOME VISITATION PROGRAM

SECTION.	SECTION.
20-78-701. Legislative declaration.	20-78-704. Freedom of Information Act — Exemption.
20-78-702. Creation — Duties and powers.	20-78-705. Patient records.
20-78-703. Rita Rowell Hale Prenatal and Early Childhood Nurse Home Visitation Program Advisory Council.	20-78-706. Limitation.
	20-78-707. Referrals — Findings.
	20-78-708. Funding.

20-78-701. Legislative declaration.

The General Assembly hereby finds that, in order to adequately care for their newborns and young children, new mothers may often benefit from receiving professional assistance and information. Without the assistance and information, a young mother may develop habits or practices that are detrimental to her health and well-being and the health and well-being of her child. The General Assembly further finds that inadequate prenatal care and inadequate care in infancy and early childhood often inhibit a child’s ability to learn and develop throughout his or her childhood and may have lasting, adverse effects on the child’s ability to function as an adult. The General Assembly recognizes that implementation of a voluntary nurse home visitor program that provides educational, health, and other resources for young mothers during pregnancy and the first years of their infants’ lives has been proven to significantly reduce the amount of drug, including nicotine, and alcohol use and abuse by mothers, the occurrence of criminal activity committed by mothers and their children under fifteen (15) years of age, and the number of reported incidents of child abuse and neglect. Such a program has also been proven to reduce the number of subsequent births, increase the length of time between subsequent births, and reduce the mother’s need for other forms of public assistance. It is the intent of the General Assembly that such a program be established for the State of Arkansas initially targeting a limited number of first-time teenage mothers and potentially expanding over time.

History. Acts 1999, No. 1115, § 1.

20-78-702. Creation — Duties and powers.

(a) The Rita Rowell Hale Prenatal and Early Childhood Nurse Home Visitation Program is established and shall be administered by the Department of Health.

(b) The department shall implement the Rita Rowell Hale Prenatal and Early Childhood Nurse Home Visitation model developed by Dr. David Olds.

(c) The department shall have the power to receive and expend grants, donations, and funds from public and private sources to carry out its responsibilities under this subchapter.

(d) The department shall collect data which will allow a valid and reliable evaluation of the short-term and long-term effectiveness of this intervention in improving maternal and child outcomes. The department shall collect data which at a minimum, will provide information on the effect of prenatal and infancy home visits by nurses on all of the following:

(1) Preterm delivery, low birth weight, and infant morbidity and mortality;

(2) Immunizations;

(3) Mental development and behavioral problems;

(4) Subsequent pregnancy;

(5) Educational achievement;

(6) Labor force participation; and

(7) Use of public assistance programs.

(e) The department shall coordinate with other state agencies to track childhood injuries, childhood maltreatment, and criminal activity.

(f) The department shall cooperate with other state agencies and the developer of the program to create a more comprehensive evaluation of the overall impact and effectiveness of the program in Arkansas.

History. Acts 1999, No. 1115, § 2; 2001, substituted "Rita Rowell Hale" for "Arkansas" in (a) and inserted it in (b). No. 237, § 1.

Amendments. The 2001 amendment

20-78-703. Rita Rowell Hale Prenatal and Early Childhood Nurse Home Visitation Program Advisory Council.

(a) There is created the Rita Rowell Hale Prenatal and Early Childhood Nurse Home Visitation Program Advisory Council.

(b) The council shall consist of eleven (11) members to be appointed by the Governor as follows:

(1) Two (2) members from the Department of Health to be nominated by the Director of the Department of Health;

(2) Two (2) members from the College of Medicine of the University of Arkansas for Medical Sciences to be nominated by the Dean of the College of Medicine;

(3) One (1) member from the College of Nursing of the University of Arkansas for Medical Sciences to be nominated by the Dean of the College of Nursing;

(4) One (1) member from the Arkansas Nurses Association;

(5) One (1) member from the University of Arkansas at Little Rock School of Social Work to be nominated by the Director of the School of Social Work;

(6) One (1) member from the Division of Child Care and Early Childhood Education of the Department of Human Services;

(7) One (1) member from the State Child Abuse and Neglect Prevention Board to be nominated by the director; and

(8) Two (2) members from the public at large, at least one (1) of whom shall be active in child advocacy within the state and one (1) of whom shall be an African American.

(c) The Director of the Rita Rowell Hale Prenatal and Early Childhood Nurse Home Visitation Program shall serve as an ex officio member of the council.

(d) Members shall be appointed for three-year staggered terms. The staggered terms shall be assigned by lot. The terms shall commence on January 15 of each year.

(e) In the event of a vacancy of one (1) of the members appointed by the Governor for any reason other than expiration of a regular term, the vacancy shall be filled for the unexpired portion of the term by appointment of the Governor, and that person shall possess the same qualifications as are required for initial appointment.

(f) Members of the council shall not be entitled to compensation for their services but may receive expense reimbursement in accordance with § 25-16-902 to be paid by the Department of Health.

(g) The council shall hold its first meeting during January, 2000 at a place and time designated by the Governor.

(h) At the initial organizational meeting of the council, the members shall elect from among their number a chair and vice chair. Annually thereafter, a meeting shall be held to elect the chair and vice chair.

(i)(A) Quarterly meetings of the council shall be held.

(B) Special meetings may be called by the chair or as provided by the rules of the council.

(j) The council shall monitor the program to ensure that the program is implemented according to the program training requirements, program protocols, program management information systems, and program evaluation requirements established by the department. The council shall evaluate the overall implementation of the program and include the evaluation, along with any recommendations concerning the selected entities or changes in the program training requirements, program protocols, program management information systems, or program evaluation requirements in the annual report submitted to the department.

(k) The program staff shall submit a written status report annually to the council.

History. Acts 1999, No. 1115, § 3; 2001, No. 237, § 2.

Amendments. The 2001 amendment substituted "Rita Rowell Hale" for "Arkan-

sas" in (a) and (c); substituted "council" for "Board" in (c); and made minor stylistic changes.

20-78-704. Freedom of Information Act — Exemption.

The Rita Rowell Hale Prenatal Early Childhood Nurse Home Visitation Program is expressly exempted from the Freedom of Information Act of 1967, § 25-19-101 et seq., and is prohibited from supplying any information by individual name or other personal identifier or in a form other than a statistical report or other appropriate form which protects the confidentiality of individuals except to any state agency or department which originally supplied the information to the system unless both the originating agency and the system grant release of this information for a specific purpose.

History. Acts 1999, No. 1115, § 4.

20-78-705. Patient records.

(1) All institutions receiving state or federal support and with patient records containing information pertaining to participating first-time mothers shall be required to share information in those records with the Rita Rowell Hale Prenatal Early Childhood Nurse Home Visitation Program.

(2) All participating first-time mothers shall sign an informed consent and medical records release document.

History. Acts 1999, No. 1115, § 5.

20-78-706. Limitation.

Nothing performed pursuant to this subchapter shall be deemed to constitute the practice of home health care as defined in § 20-10-801 et seq.

History. Acts 1999, No. 1115, § 6.

20-78-707. Referrals — Findings.

(a) Any physician, clinic, person, or organization may provide information and referrals to the Rita Rowell Hale Prenatal Early Childhood Nurse Home Visitation Program.

(b) No liability of any kind or character for damages or other relief shall arise or be enforced against any person or organization by reason of having provided the information or by reason of having released or published the findings of the program in order to reduce child abuse or neglect or to advance medical research or medical education.

History. Acts 1999, No. 1115, § 7.

20-78-708. Funding.

The Director of the Department of Health is authorized to utilize available general revenue savings and allowable federal funds in support of the activities described in this subchapter in the event that sufficient funds are not allocated for the Rita Rowell Hale Prenatal and Early Childhood Nurse Home Visitation Program herein. The director is authorized to transfer appropriations and funds as necessary but only for the purposes provided in this subchapter. Upon approval of the Chief Fiscal Officer of the State and review by the Legislative Council, the transfers shall be made upon the books of the Department of Finance and Administration, the Auditor of State, and the Treasurer of State.

History. Acts 1999, No. 1115, § 8; 2001, No. 237, § 3. inserted "Rita Rowell Hale" and made minor stylistic changes.

Amendments. The 2001 amendment

CHAPTER 79

REHABILITATION SERVICES

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. REHABILITATION ACT OF ARKANSAS.
3. TECHNOLOGY EQUIPMENT REVOLVING LOAN FUND.
4. TELECOMMUNICATIONS DEVICES.

RESEARCH REFERENCES

ALR. Applicability and application of zoning regulations to single residences employed for group living of mentally retarded persons. 32 ALR 4th 1018.

Community residence for mentally disabled persons as violation of restrictive covenant. 41 ALR 4th 1216.

Validity, construction, and effect of stat-

ute requiring consultation with, or approval of, local governmental unit prior to locating group home, halfway house, or similar community residence for the mentally ill. 51 ALR 4th 1096.

Workers' compensation, vocational rehabilitation statutes. 67 ALR 4th 612.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

20-79-101. Vocational rehabilitation — Federal act accepted.

SECTION.

20-79-102. Caseworkers for the blind.

Effective Dates. Acts 1923, No. 70, § 7: effective on passage.

Acts 1955, No. 168, § 3: Mar. 8, 1955. Emergency clause provided: "It is hereby

determined that rehabilitation of the blind of this State permits economic prosperity and public welfare, and that immediate action is necessary in order to pro-

vide for more adequate vocational rehabilitation services to the blind, and that the immediate passage of this act is necessary to provide such vocational rehabilitation services. Therefore, this act be-

ing necessary for the immediate preservation of the public peace, health and safety, an emergency is hereby declared to exist, and this act shall be in full force and effect from and after its passage and approval."

20-79-101. Vocational rehabilitation — Federal act accepted.

The State of Arkansas does, through its General Assembly, accept the provisions and benefits of the act of Congress entitled, "An act to provide for the promotion of vocational rehabilitation of persons, disabled in industry or otherwise and their return to civil employment" [repealed] approved June 2, 1920, and the State of Arkansas, through the proper authorities hereinafter designated, will observe and comply with the requirements of the act.

History. Acts 1923, No. 70, § 1; Pope's Dig., § 11639; A.S.A. 1947, § 80-2518.

gress referred to in this section is Pub. L. 66-236. That law has been repealed.

Publisher's Notes. The act of Con-

20-79-102. Caseworkers for the blind.

The deputy director of the appropriate division of the Department of Human Services is authorized and empowered to employ caseworkers for the blind, prepare regulations governing personnel standards, define the duties of the caseworkers for the blind, and make such other regulations as may be necessary to carry out the purpose of this section.

History. Acts 1955, No. 168, § 2; A.S.A. 1947, § 83-160.

SUBCHAPTER 2 — REHABILITATION ACT OF ARKANSAS

SECTION.

- 20-79-201. Title.
- 20-79-202. Policy.
- 20-79-203. Definitions.
- 20-79-204. Deputy Director.
- 20-79-205. Administration.
- 20-79-206. Operation of rehabilitation facilities.
- 20-79-207. Cooperative agreements.
- 20-79-208. Ownership, exchange, and sale of equipment.
- 20-79-209. Acceptance and use of gifts.
- 20-79-210. Receipt and disbursement of rehabilitation funds.

SECTION.

- 20-79-211. Appropriations.
- 20-79-212. Limitation of political activity by officer or employee.
- 20-79-213. Eligibility for rehabilitation services.
- 20-79-214. Nonassignability and exemption from claims of creditors of maintenance.
- 20-79-215. Hearings.
- 20-79-216. Use of Arkansas Rehabilitation Services information prohibited — Exception.

Publisher's Notes. Acts 1993, No. 574, § 1, provided, in part: "Effective July 1, 1993, the Division of Rehabilitation Ser-

vices of the Department of Human Services is transferred to the Division of Vocational and Technical Education of the

Department of Education, and shall be known as the Arkansas Rehabilitation Services. The State Board of Vocational Education shall have the same authority and responsibility with respect to the administration and operation of the Arkansas Rehabilitation Services as it has with respect to the Division of Vocational and Technical Education."

Section 2 provided: "The policy and scope of the Arkansas Rehabilitation Services shall be to provide increased employment of individuals with disabilities through the provision of individualized training, independent living services, educational and support services, and meaningful opportunities for employment in integrated work settings to maximize employment, economic self-sufficiency, independence, and inclusion and integration into society.

"Pursuant to such policy, rehabilitation services shall be provided to citizens throughout the state and the rehabilitation plan adopted pursuant to this act shall be in effect in all political subdivisions of the state."

Section 3 provided: "All authorities and responsibilities defined in Act 43 of 1955 as amended shall be administered by the Arkansas Rehabilitation Services, under the direction of the State Board of Vocational Education except those transferred to the Division of State Services for the Blind by Act 481 of 1983."

Section 4 provided: "Any and all appropriations for the Division of Rehabilitation Services of the Department of Human Services for fiscal year 1993, plus any additional legislative appropriation for the 1993-95 biennium for the Division of Rehabilitation Services, shall be deemed to be appropriated to and shall be made available for the operation and maintenance of the Arkansas Rehabilitation Services of the Division of Vocational and Technical Education of the Department of Education. The Director of the Department of Finance and Administration shall transfer to the Arkansas Rehabilitation Services all appropriations and funds from any other sources in the custody or control of the Department of Human Services which are designated for the Division of Rehabilitation Services."

Section 5 provided: "The State Board of Vocational Education, through the Arkansas Rehabilitation Services, shall provide

the rehabilitation services authorized by this act to eligible physically or mentally disabled individuals and those who can benefit from independent living services, determined by the agency to be eligible therefor, and, in carrying out the purposes of this act, the Arkansas Rehabilitation Services is authorized, among other things:

"(a) to be the sole state agency to supervise and administer the rehabilitation services authorized by this act except such part or parts as may be administered by a local agency in a political subdivision of the state, in which case the service shall be the sole agency to supervise such local agency in the administration of such part or parts; and

"(b) to conduct research and compile statistics relative to the provision of services or the need of services of disabled individuals."

Section 6 provided: "Any and all statutory authority, powers, duties, functions, records, authorized positions, property, unexpended balances of appropriations, allocations or other funds, transferred from the Division of Rehabilitative Services to the Department of Human Services by Act 348 of 1985 are hereby transferred to the Arkansas Rehabilitation Services of the Division of Vocational and Technical Education of the Department of Education."

Section 7 provided: "All employees of the Arkansas Rehabilitation Services as of effective date of this act shall be eligible for membership in the Public Employees Retirement System or Teacher Retirement System or alternate retirement systems. Any such employee who desires to change retirement systems must do so within ninety (90) calendar days after the effective date of this act."

Section 8 provided: "The Division of Rehabilitation Services of the Department of Human Services as now constituted shall continue in existence for all purposes, intact, until July 1, 1993, at which time said Division shall be transferred to the Division of Vocational and Technical Education of the Department of Education. The transfer shall include all employees, powers, duties, licenses, privileges, equipment, vehicles, furniture, fixtures, supplies, books, records, stock, goods, funds, unexpended appropriations and facilities relating to rehabilitation

services and training. The Department of Human Services will transfer appropriate positions, as identified by the Arkansas Rehabilitation Services, necessary to meet Arkansas Rehabilitation Services administration and program support needs in numbers not to exceed those transferred from the Division of Rehabilitation Services to the Department of Human Services by Acts 348 and 752 of 1985."

Section 9 provided: "State Building Services shall insure that all offices of the Arkansas Rehabilitation Services of the Division of Vocational and Technical Education of the Department of Education are exemplary models of accessibility and conform to Americans with Disabilities Act Accessibility Guidelines."

Effective Dates. Acts 1955, No. 43, § 20: effective on passage.

Acts 1959, No. 34, § 16: Feb. 13, 1959. Emergency clause provided: "It is hereby ascertained and declared that the existing laws pertaining to the administration and operation of the rehabilitation service are inadequate to fully implement federal legislation in the establishment of rehabilitation facilities and that the immediate passage of this Act is necessary to remedy this condition. Therefore, an emergency is declared to exist, and this Act being necessary for the preservation of the public peace, health and safety, shall take effect and be in force from the date of its approval."

20-79-201. Title.

This subchapter may be cited as the "Rehabilitation Act of Arkansas".

History. Acts 1955, No. 43, § 1; 1959, No. 34, § 1; A.S.A. 1947, § 80-2540.

20-79-202. Policy.

(a) It is declared to be the policy of the State of Arkansas to provide needed and feasible rehabilitation services to eligible disabled and handicapped individuals throughout the state to the end that they may engage in useful and remunerative occupations to the extent of their capabilities. In rehabilitating individuals who may be expected to achieve the ability of independent living as to dispense with, or largely dispense with, the need for institutional care or, if not institutionalized, to dispense with, or largely dispense with, the need for an attendant, it is also declared to be the policy of the State of Arkansas to provide needed and feasible rehabilitation services to eligible disabled and handicapped individuals throughout the state, thereby increasing the social and economic well-being of themselves and their families and the productive capacity of the state and reducing the burden of dependency on families and taxpayers.

(b) Pursuant to this policy, rehabilitation services shall be provided to citizens throughout the state. The rehabilitation plan adopted pursuant to this subchapter shall be in effect in all political subdivisions of this state.

History. Acts 1955, No. 43, § 2; 1959, No. 34, § 2; A.S.A. 1947, § 80-2541.

20-79-203. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Blind person" means a person who has:

(A) Not more than $\frac{20}{200}$ central visual acuity in the better eye after correction; or

(B) An equally disabling loss of the visual field;

(2) "Director" means the Director of the Arkansas Rehabilitation Services who may, at the discretion of the appropriate division of the Department of Human Services, be designated Executive Officer for the Arkansas Rehabilitation Services;

(3) "Disabled individual" means any person who, as a result of a physical or mental disability:

(A) Has a substantial employment handicap and who may, through receiving vocational rehabilitation services, be qualified for remunerative employment; or

(B) May achieve such ability of independent living, through receiving rehabilitation services, which will enable him or her to dispense with or largely dispense with the need for institutional care or attendant care in the household;

(4) "Employment handicap" means a physical or mental condition which constitutes, contributes to, or if not corrected will probably result in a substantial impairment of occupational performance;

(5) "Establishment of a workshop or rehabilitation facility" means:

(A) In the case of a workshop, the expansion, remodeling, or alteration of existing buildings to adapt them to workshop purposes or to increase employment opportunities, and the acquisition of initial equipment; and

(B) In the case of a rehabilitation facility, the expansion, remodeling, or alteration of existing buildings, the initial equipment of the buildings, and initial staffing thereof;

(6) "Maintenance" means money payment not exceeding the estimated cost of subsistence during the provision of rehabilitation services;

(7) "Nonprofit", when used with respect to a rehabilitation facility or workshop, means a rehabilitation facility or a workshop owned and operated by a corporation or association, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any shareholder or individual, and this income is exempt from taxation under § 101 (6) of the Internal Revenue Code;

(8) "Physical restoration" means any medical, surgical, or therapeutic treatment necessary to correct or substantially reduce a disabled individual's disability within a reasonable length of time, including the use of prosthetic appliances but excluding curative treatment for acute or transitory conditions, excepting treatment of medical complications and emergencies as may arise during the rendering of rehabilitation services;

(9) "Rehabilitation" and "rehabilitation services" means any service, provided directly or through public or private instrumentalities, found

by the director to be necessary to compensate a disabled individual for his or her employment handicap and to enable him or her to engage in a remunerative occupation or to achieve independent living, including, but not limited to, medical and vocational diagnosis, vocational guidance, counseling and placement, training, physical restoration, transportation, occupational and business licenses, equipment, initial stocks and supplies, maintenance, and training books and materials. The term covers the establishment and operation of workshops, rehabilitation centers, home industries, and small business enterprises for the blind and severely disabled;

(10) "Rehabilitation facility" is a facility operated for the purpose of assisting in the rehabilitation of disabled persons, which provides one (1) or more of the following types of services:

- (A) Testing, fitting, or training in the use of prosthetic devices;
- (B) Prevocational or conditioning therapy;
- (C) Physical, corrective, or occupational therapy;
- (D) Adjustment training, or evaluation or control of special impairments; or

(E) Services in which a coordinated approach is made to the physical, mental, and vocational evaluation of impaired persons and an integrated program of physical restoration and pre-vocational or vocational training is provided under competent professional supervision and direction;

(11) "Rehabilitation training" means all necessary training provided to a disabled individual to compensate for his or her employment handicap, including, but not limited to, prevocational, vocational, and supplementary training and training provided for the purpose of developing occupational skills and capacities;

(12) "Remunerative employment" includes employment in the competitive labor market, practice of a profession, self-employment, homemaking, farm or family work where payment is in kind rather than cash, sheltered employment, home industry, or other homebound work of a remunerative nature;

(13) "Service" means the Arkansas Rehabilitation Services established by this subchapter; and

(14) "Workshop" means a place where any manufacture or handwork is carried on and which is operated for the primary purpose of providing remunerative employment to severely disabled persons who cannot be readily absorbed in the competitive labor market.

History. Acts 1955, No. 43, § 3; 1959, No. 34, § 3; A.S.A. 1947, § 80-2542. nal Revenue Code is codified as 26 U.S.C. § 501(c).

U.S. Code. Section 101 (6) of the Inter-

20-79-204. Deputy Director.

(a) The Arkansas Rehabilitation Services shall be administered, under the general supervision and direction of the appropriate division of the Department of Human Services, by a deputy director, appointed

in accordance with established personnel standards and on the basis of education, training, experience, and demonstrated ability in the field of rehabilitation.

(b) In carrying out his or her duties under this subchapter, the deputy director:

(1) Shall, with the approval of the Director of the Department of Human Services, prepare regulations for promulgation by the appropriate division of the department governing personnel standards, the protection of records and confidential information, the manner and form of filing applications, eligibility, and investigation and determination thereof, for rehabilitation services, procedures for fair hearings, and such other regulations as he or she finds necessary to carry out the purposes of this subchapter, including the order to be followed in selecting those to whom rehabilitation services are to be provided in situations where service cannot be provided to all who are eligible for service;

(2) Shall, with the approval of the director, establish appropriate subordinate administrative units within the service;

(3) Shall recommend to the director for appointment such personnel as he or she deems necessary for the efficient performance of the functions of the service;

(4) Shall prepare and submit to the director and the Governor annual reports of activities and expenditures and, prior to each regular session of the General Assembly, estimates of sums required to carry out this subchapter, as well as estimates of the amounts to be made available for this purpose from all sources;

(5) Shall make certification for disbursement, in accordance with regulations, of funds available for carrying out the purposes of this subchapter; and

(6) May, with the approval of the director, delegate to any officer or employee of the service such of his or her powers and duties, except the making of regulations and the making of recommendations for appointment of personnel, as he or she finds necessary to carry out the purposes of this subchapter.

History. Acts 1955, No. 43, § 5; 1959, No. 34, § 5; A.S.A. 1947, § 80-2544.

20-79-205. Administration.

The deputy director of the appropriate division of the Department of Human Services shall provide the rehabilitation services authorized by this subchapter to the physically or mentally disabled, including blind citizens and those who can benefit from independent living services, as determined by the director to be eligible therefor. In carrying out the purposes of this subchapter, the Arkansas Rehabilitation Services is authorized, among other things:

(1) To be the sole state agency to supervise and administer the rehabilitation services authorized by this subchapter except such part

as may be administered by a local agency in a political subdivision of the state, in which case the service shall be the sole agency to supervise the local agency in the administration of that part;

(2) To enter into reciprocal agreements with other states to provide for the services authorized by this subchapter to residents of the state concerned;

(3) To conduct research and compile statistics relating to the provision of services or the need of services of disabled individuals;

(4) To license blind individuals to operate vending stands under its supervision and control and subject to the terms and conditions in regulations issued pursuant to § 20-79-204(b)(1) on:

(A) State property;

(B) County or municipal property;

(C) Federal property, pursuant to delegation of authority under the Randolph-Sheppard Act and any amendment thereto or any act of Congress relating to this subject;

(D) Private property; and

(E) Subject to Acts 1945, No. 142, § 2 [superseded]; and

(5) To provide for the establishment, supervision, and control of suitable business enterprises to be operated by the severely disabled individual, including the blind, where the operation will be improved through the management and supervision of the service.

History. Acts 1955, No. 43, § 6; 1959, No. 34, § 6; A.S.A. 1947, § 80-2545. Act referred to in this section is codified in 20 U.S.C. § 107 et seq.

U.S. Code. The Randolph-Sheppard

20-79-206. Operation of rehabilitation facilities.

(a) The Arkansas Rehabilitation Services is authorized to utilize funds made available:

(1) From appropriations by Congress;

(2) By appropriations by the General Assembly;

(3) From the disbursement of funds of other state agencies; and

(4) By gifts, grants, fees for services, sale of products or items of manufacture or handwork, and donations for the purpose of establishing and operating rehabilitation centers, workshops, business enterprises, programs, and home industries and other facilities.

(b) Gifts, grants, fees for services, income from the sale of products or items of manufacture or handwork, and donations may be deposited in one (1) or more banks and expended by the appropriate division of the Department of Human Services, in compliance with the rules and regulations of the Director of the Department of Finance and Administration, in the establishment and operation of rehabilitation facilities and such other program services as may be determined by the appropriate division of the Department of Human Services, which are consistent with the purposes of this subchapter.

(c) The appropriate division of the Department of Human Services is authorized and empowered to lease or purchase public or private

property, real, personal, or mixed, for the purpose of establishing and operating rehabilitation facilities.

History. Acts 1955, No. 43, § 7; 1959, No. 34, § 7; A.S.A. 1947, § 80-2546.

20-79-207. Cooperative agreements.

The appropriate division of the Department of Human Services, through the Arkansas Rehabilitation Services, is empowered and directed to:

(1) Cooperate with any other division of the department in an effort to rehabilitate those disabled individuals who are applicants for or recipients of public assistance. In this respect, it is the intent of the General Assembly that the employment and self-maintenance of disabled adults shall be encouraged to the maximum extent. The Arkansas Rehabilitation Services and any other division of the department shall take all necessary steps to implement the intent of this section, including the joint development of plans for orderly referral and processing of feasible cases with priority being given to those for whom rehabilitation is determined most feasible;

(2) Cooperate with the federal government, pursuant to agreements, in carrying out the purposes of any federal statutes pertaining to the purposes of this subchapter. The board is also authorized to:

(A) Adopt such methods of administration as are found to be necessary for proper and efficient operation of the agreements or plans for rehabilitation and to comply with such conditions as may be necessary to secure the full benefits of federal statutes and appropriations;

(B) Administer any legislation pursuant thereto enacted by the State of Arkansas;

(C) Direct the disbursement, and administer the use of, all funds provided by the federal government or the state for the rehabilitation of disabled persons of Arkansas; and

(D) Do all things necessary to ensure the rehabilitation of disabled persons;

(3) Cooperate with other federal, state, and local public agencies and institutions in providing services relating to rehabilitation, including the Arkansas State Employment Service, and make maximum utilization of the job placement and employment counseling services and other services and facilities of the offices in providing the services authorized by this subchapter in studying the problems involved therein and in establishing, developing, and providing such programs, facilities, and services as may be necessary or desirable;

(4) Cooperate with political subdivisions and other public and non-profit organizations and agencies in the establishment of workshop-rehabilitation facilities and use such facilities as meet the standards established by the state board in providing rehabilitation services; and

(5) Enter into contractual arrangements with the Social Security Administration with respect to certifications of disabilities and perfor-

mance of other duties and with other authorized public agencies for performance of services related to rehabilitation.

History. Acts 1955, No. 43, § 8; 1959, No. 34, § 8; A.S.A. 1947, § 80-2547.

20-79-208. Ownership, exchange, and sale of equipment.

(a) The Rehabilitation Service is authorized to retain title to any property, tools, instruments, training supplies, equipment, or other items of value acquired for use of handicapped persons and to repossess and transfer title for the use of other handicapped persons.

(b) The appropriate division of the Department of Human Services is authorized to offer for sale any surplus items acquired in the operation of the program when they are no longer necessary or to exchange them for necessary items which may be used to greater advantage.

(c)(1) When any surplus equipment is sold or exchanged, a receipt for the equipment shall be taken from the purchaser showing the consideration given for the equipment and forwarded to the Treasurer of State.

(2) Any funds received by the appropriate division of the department pursuant to the transactions shall be deposited in the State Treasury in the appropriate federal or state rehabilitation fund and shall be available for expenditures for any purposes consistent with this subchapter.

History. Acts 1955, No. 43, § 14; A.S.A. 1947, § 80-2553.

20-79-209. Acceptance and use of gifts.

The division is authorized and empowered to accept and use gifts and donations, whether from public or private sources, as may be offered unconditionally or under such conditions as are determined proper and consistent with the provisions of this subchapter, and the division may hold, invest, reinvest, and use the gifts and donations in accordance with the conditions of the gifts and donations.

History. Acts 1955, No. 43, § 11; A.S.A. 1947, § 80-2550.

20-79-210. Receipt and disbursement of rehabilitation funds.

(a) The Treasurer of State is designated as custodian of all moneys received from the federal government for the purpose of carrying out any federal statutes pertaining to the purpose of this subchapter.

(b) The Treasurer of State shall make disbursements from the federal funds and all state funds available for such purposes upon certification in the manner provided in § 20-79-204.

(c) All federal grants received in adjustment of the federal-state account may be expended during the year received or in any succeeding year.

History. Acts 1955, No. 43, § 9; A.S.A. 1947, § 80-2548.

20-79-211. Appropriations.

(a) Budget estimates of the amount of appropriations needed each fiscal year for rehabilitation services and for the administration of the program shall be submitted by the deputy director to the appropriate division of the Department of Human Services. The amount approved shall be included in the estimates made by the appropriate division to the General Assembly for the operation of the rehabilitation program.

(b) In the event federal funds are available to the State of Arkansas for rehabilitation purposes, the Arkansas Rehabilitation Services is authorized to comply with such requirements as may be necessary to obtain the federal funds in the maximum amount and most advantageous proportion possible insofar as this may be done without violating other provisions of the state law and Constitution.

(c) In the event Congress fails in any year to appropriate funds for grants-in-aid to the state for rehabilitation purposes, the appropriate division shall include as a part of the budget a request for adequate state funds for rehabilitation purposes.

History. Acts 1955, No. 43, § 10; 1959, No. 34, § 9; A.S.A. 1947, § 80-2549.

20-79-212. Limitation of political activity by officer or employee.

(a) No officer or employee engaged in the administration of the rehabilitation program shall use his or her official authority or influence, or permit the use of the rehabilitation program, for the purpose of interfering with an election or affecting the results thereof or for any partisan political purpose.

(b) No officer or employee shall take any active part in the management of political campaigns or participate in any political activity, except that he or she shall retain the right to vote as he or she may please and to express his or her opinions as a citizen on all subjects.

(c) No officer or employee shall solicit or receive, nor shall any officer or employee be obligated to contribute or render, any service, assistance, subscription, assessment, or contribution for any political purpose.

(d) Any officer or employee violating this provision shall be subject to discharge or suspension.

History. Acts 1955, No. 43, § 17; 1959, No. 34, § 13; A.S.A. 1947, § 80-2556.

Cross References. Political activity of public employees permitted, § 21-1-207.

20-79-213. Eligibility for rehabilitation services.

(a) Rehabilitation services shall be provided to any disabled individual:

(1) Who is a bona fide resident of the state at the time of filing his or her application therefor and whose rehabilitation the Director of the Rehabilitation Service determines, after full investigation, can be satisfactorily achieved; or

(2) Who is eligible therefor under the terms of an agreement with another state or with the federal government.

(b) However, except as otherwise provided by law or as specified in any agreement with the federal government with respect to classes of individuals certified to the appropriate division of the Department of Human Services thereunder, the following rehabilitation services shall be provided at public cost only to disabled individuals found to require financial assistance with respect thereto:

(1) Physical restoration;

(2) Transportation provided for other purposes than to determine the eligibility of the individual for rehabilitation services and the nature and extent of the services necessary;

(3) Occupational and business licenses;

(4) Tools, equipment, initial stock and supplies, including livestock and capital advances, books, and training materials; and

(5) Maintenance.

History. Acts 1955, No. 43, § 12; 1959, No. 34, § 10; A.S.A. 1947, § 80-2551.

20-79-214. Nonassignability and exemption from claims of creditors of maintenance.

The right of disabled individuals to maintenance under this subchapter shall not be transferable or assignable at law or in equity and shall be exempt from the claims of creditors.

History. Acts 1955, No. 43, § 13; A.S.A. 1947, § 80-2552.

20-79-215. Hearings.

Any individual applying for or receiving rehabilitation who is aggrieved by any action or inaction of the Rehabilitation Service shall be entitled to a hearing in accordance with the regulations adopted and promulgated by the appropriate division of the Department of Human Services on that subject.

History. Acts 1955, No. 43, § 15; 1959, No. 34, § 11; A.S.A. 1947, § 80-2554.

20-79-216. Use of Arkansas Rehabilitation Services information prohibited — Exception.

It shall be unlawful, except for purposes directly connected with the administration of the Arkansas Rehabilitation Services and in accordance with regulations, for any person to solicit, disclose, receive, or make use of, or to authorize, knowingly permit, participate in, or acquiesce in the use of any list of, or name of, or any information concerning persons applying for or receiving rehabilitation, directly or indirectly derived from the records.

History. Acts 1955, No. 43, § 16; 1959, No. 34, § 12; A.S.A. 1947, § 80-2555.

SUBCHAPTER 3 — TECHNOLOGY EQUIPMENT REVOLVING LOAN FUND

SECTION.

20-79-301. Committee — Establishment — Members.
20-79-302. Committee — Meetings — Rules and regulations.

SECTION.

20-79-303. Technology Equipment Revolving Loan Fund — Administration.

Effective Dates. Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared

to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor [sic], it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

20-79-301. Committee — Establishment — Members.

(a)(1) There is created the Technology Equipment Revolving Loan Fund Committee, to be composed of nine (9) members, of which at least five (5) members must be individuals with disabilities, to be appointed by the Governor as follows:

- (A) The Director of the Arkansas Rehabilitation Services;
- (B) A representative of the banking industry;
- (C) A representative of a disability related consumer organization;
- (D) A certified public accountant; and
- (E) Five (5) additional members appointed from the state at large.

(2) The director shall be an ex officio member and shall serve as chair of the committee, voting only in case of a tie vote.

(3) The committee shall elect from its membership a vice chair and a secretary-treasurer.

(b) All members shall be appointed for a term of three (3) years.

(c)(1) Vacancies on the committee from death, resignations, or otherwise shall be filled by appointment of the Governor to fill the unexpired term that had been created.

(2) Any member of the committee who is absent from three (3) successive regular meetings for any reason other than illness of the member, verified by a written sworn statement by his or her attending physician and entered into the minutes of the committee, shall thereby forfeit and vacate his or her membership on the committee. This forfeiture and vacancy shall be certified to the Governor by the committee. The Governor shall fill the vacancy in the same manner as for other vacancies on the committee.

(d) Members of the committee shall serve without additional compensation, except that committee members may receive expense reimbursement in accordance with § 25-16-901 et seq.

History. Acts 1993, No. 384, § 6; 1997, No. 250, § 208.

Publisher's Notes. Acts 1993, No. 384, § 6 provided, in part, that the three year term of initial members of the Technology Equipment Revolving Loan Fund Committee begin July 1, 1993; however, at the first meeting of the committee, the members shall, by random process approved by a majority of the members, assign initial

terms to each member. Three (3) of the initial members shall serve a term of one (1) year, three (3) shall serve a term of two (2) years, and three (3) shall serve a term of three (3) years.

Amendments. The 1997 amendment rewrote (d).

Cross References. Technology Equipment Revolving Loan Fund, § 19-5-1059.

20-79-302. Committee — Meetings — Rules and regulations.

(a) The Technology Equipment Revolving Loan Fund Committee shall meet at least once annually and may meet more often as necessary if meetings are called by the chair or by a majority of the committee and if all members of the committee are notified of the time, date, and place of the meeting in advance.

(b)(1) The committee shall adopt rules governing its proceedings.

(2) All rules adopted by the committee shall be promulgated pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 1993, No. 384, §§ 6-8.

20-79-303. Technology Equipment Revolving Loan Fund — Administration.

(a) The Arkansas Rehabilitation Services shall administer the Technology Equipment Revolving Loan Fund.

(b) The Arkansas Rehabilitation Services shall submit to the Technology Equipment Revolving Loan Fund Committee proposed rules and regulations governing the operation of the fund, including, but not limited to, eligibility for receipt of funds, purposes for which funds may

be available, repayment of funds, administrative adjudications in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq., and all other matters consistent with and necessary to accomplish the purposes as set out in this subchapter.

(c)(1) The committee shall be advisers to the Arkansas Rehabilitation Services in making loans under this subchapter.

(2) The Director of the Arkansas Rehabilitation Services must act on the recommendation of the committee within thirty (30) days of the committee's recommendation or the recommendation of the committee shall be final.

History. Acts 1993, No. 384, §§ 6, 8, 9.

SUBCHAPTER 4 — TELECOMMUNICATIONS DEVICES

SECTION.	SECTION.
20-79-401. Statewide program established.	20-79-403. Ownership of equipment — Telecommunications Equipment Fund.
20-79-402. Eligibility.	

A.C.R.C. Notes. Acts 1997, No. 1080, § 14, provided, in part, that “to the extent any provisions of this act conflict with any provisions of Act 501 of 1995 the provisions of Act 501 shall prevail.” Acts 1997, No. 1080 is codified as § 25-29-101 et seq.

Cross References. Arkansas Deaf and Hearing Impaired Telecommunications Services Corporation, § 25-29-101 et seq.

20-79-401. Statewide program established.

(a)(1) The Arkansas Rehabilitation Services is hereby directed to establish, administer, staff, and promote a statewide program to provide access to public telecommunications services by residents of Arkansas who are deaf, hard of hearing, deaf and blind, severely speech-impaired, or who have other disabilities that impair their ability to effectively access the telecommunications network. This program will enable these individuals to access specialized devices or services for telecommunications network access that is functionally equivalent to that enjoyed by individuals without disabilities.

(2) This program shall include, but is not limited to:

(A) The purchase and distribution of telecommunications devices and related devices for the persons who are deaf, hard of hearing, deaf and blind, severely speech-impaired, or who have other disabilities that impair their ability to effectively access the telecommunications network;

(B) The promulgation of procedures, regulations, rules, and criteria necessary to implement and administer this program, including accountability measures which utilize consumer participation in the selection and evaluation of equipment and the eligibility of applicants; and

(C) Other actions as may be necessary to implement and administer this program which are not otherwise prohibited by law.

(b) The Arkansas Rehabilitation Services shall employ at least one (1) full-time staff person to administer the equipment distribution program and may employ any additional support personnel for the program from within existing staff resources to assure statewide coverage for the program.

History. Acts 1995, No. 501, § 1; 2001, No. 530, § 2.

Amendments. The 2001 amendment, in (a)(1), deleted "Office for the Deaf and Hearing Impaired of" preceding "Arkansas Rehabilitation," deleted "and others such as the" preceding "severely speech-impaired," and added the language following "severely speech-impaired"; in (a)(2)(A), deleted "and for others who are"

preceding "severely speech-impaired" and added the language following "severely speech-impaired"; and substituted "Arkansas Rehabilitation Services" for "Office for the Deaf and Hearing Impaired" in (b).

Cross References. Surcharges to provide telecommunications for deaf and hearing impaired, § 23-17-119.

Telecommunications Equipment Fund, § 19-6-482.

20-79-402. Eligibility.

(a) In order for a person to be eligible for the equipment distribution program, a person shall be certified as deaf, hard of hearing, deaf and blind, speech-impaired, or having another disability that impairs the individual's ability to effectively access the telecommunications network by a licensed physician, audiologist, or speech pathologist or by any other method recognized by the Arkansas Rehabilitation Services.

(b)(1) Arkansas Rehabilitation Services shall also consider financial need and, in so doing, shall take into account financial need standards or other means tests applicable to other programs administered by the office when promulgating procedures, regulations, rules, and criteria necessary to implement and administer this program.

(2) Arkansas Rehabilitation Services may develop a sliding scale of eligibility to provide equipment to individuals exceeding the baseline needs tests mentioned in this section.

History. Acts 1995, No. 501, § 2; 2001, No. 530, § 3.

Amendments. The 2001 amendment, in (a), inserted "or having another ... telecommunication network" and substituted "Arkansas Rehabilitation Services" for "Office for the Deaf and Hearing Impaired."

Cross References. Surcharges to provide telecommunications for deaf and hearing impaired, § 23-17-119.

Telecommunications Equipment Fund, § 19-6-482.

20-79-403. Ownership of equipment — Telecommunications Equipment Fund.

(a)(1) Equipment purchased under this subchapter shall remain the property of the State of Arkansas for two (2) years and then become the property of the recipient of the equipment.

(2) A person who receives the equipment shall be responsible for the maintenance of the equipment and liable to the Arkansas Rehabilitation Services for the loss of or damage to the equipment.

(3) In the event of the death of an individual in possession of the equipment, or should a person in possession of the equipment leave the state, the equipment shall automatically revert to the possession of the Arkansas Rehabilitation Services.

(b) Any money collected by the Arkansas Rehabilitation Services under this section shall be deposited in the Telecommunications Equipment Fund created under § 19-6-482.

History. Acts 1995, No. 501, § 3; 2001, No. 530, § 4.

Amendments. The 2001 amendment added the language following "State of Arkansas" in (a)(1); and substituted "Arkansas Rehabilitation Services" for "Office

for the Deaf and Hearing Impaired" in (a)(2).

Cross References. Surcharges to provide telecommunications for deaf and hearing impaired, § 23-17-119.

CHAPTER 80

COMMUNITY SERVICES

SUBCHAPTER.

1. GENERAL PROVISIONS. [RESERVED.]
2. OLDER WORKER COMMUNITY SERVICE EMPLOYMENT ACT.
3. COMMUNITY SERVICE AND COMMUNITY ACTION PROGRAM ACT OF 1985.
4. COMMISSIONER OF STATE LANDS URBAN HOMESTEAD ACT.

SUBCHAPTER 1 — GENERAL PROVISIONS

[Reserved]

SUBCHAPTER 2 — OLDER WORKER COMMUNITY SERVICE EMPLOYMENT ACT

SECTION.

- 20-80-201. Title.
20-80-202. Purpose.
20-80-203. Definitions.

SECTION.

- 20-80-204. Administration of program.
20-80-205. Program standards and procedures.

20-80-201. Title.

This subchapter may be cited as the "Older Worker Community Service Employment Act".

History. Acts 1985, No. 1031, § 1; A.S.A. 1947, § 81-1507.

20-80-202. Purpose.

(a) In order to foster and promote useful part-time employment opportunities in community service activities for low-income persons who are fifty-five (55) years of age or older and who have poor

employment prospects, the Older Worker Community Service Employment Program is created.

(b) The Division of Aging and Adult Services, Department of Human Services, is authorized to establish and administer this program in accordance with the provisions of this subchapter, utilizing such funds as may be appropriated by the General Assembly in support of this subchapter.

History. Acts 1985, No. 1031, § 2;
A.S.A. 1947, § 81-1508.

20-80-203. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Community service" means social, health, welfare, educational, recreational development, maintenance, or restoration of natural resources, community betterment or beautification, environmental protection, and such other services which are or might be essential and necessary to the community;

(2) "Community-based agency" means a public or not-for-profit organization whose primary purposes and experiences are in the development and implementation of programs for the elderly;

(3) "Department" means the Department of Human Services;

(4) "Eligible individual or participant" means an individual who is fifty-five (55) years of age or older and whose household income does not exceed two hundred percent (200%) of the Supplemental Security Income level, as established by the Social Security Administration. Furthermore, participants in the program funded under this subchapter shall not be considered to be state employees as a result of such employment for any purpose;

(5) "Division" means the Division of Aging and Adult Services; and

(6) "Program" means the Older Worker Community Service Employment Program.

History. Acts 1985, No. 1031, § 3;
A.S.A. 1947, § 81-1509; Acts 1991, No.
772, § 1.

20-80-204. Administration of program.

In order to carry out the provisions of this subchapter, the Division of Aging and Adult Services is authorized:

(1) To enter into agreements with and make program grants to community-based agencies for the purpose of establishing statewide implementation of the Older Worker Community Service Employment Program. However, the division shall make no payments towards the cost of the program unless the division determines that the community-based agencies will adhere to the provisions of § 20-80-205 and the established regulations or policies related to the administration of this subchapter;

(2) To allow reasonable and appropriate administrative cost for the total program, which in no event shall exceed the allowable percentage limitation established for Title V of the Older Americans Act; and

(3) To make, issue, and amend regulations and policies as may be necessary to effectively carry out the provisions of this subchapter.

History. Acts 1985, No. 1031, § 4; cans Act, referred to in subdivision (2) of A.S.A. 1947, § 81-1510. this section, is codified as 42 USC § 3056

U.S. Code. Title V of the Older Americans Act, referred to in subdivision (2) of this section, is codified as 42 USC § 3056 et seq.

20-80-205. Program standards and procedures.

(a) In the development and implementation of the Older Worker Community Service Employment Program, the Division of Aging and Adult Services shall adopt program standards and procedures that will ensure that the intent and provisions of this subchapter are adhered to by community-based agencies receiving program grant funds.

(b) At a minimum, the program and each program grant funded will:

(1) Provide employment only for eligible individuals, except for necessary technical, administrative, and supervisory personnel, but the personnel shall, to the fullest extent possible, be recruited from among eligible individuals;

(2) Employ eligible individuals in community service programs or agencies sponsored by organizations exempt from taxation under the provisions of the Internal Revenue Code, other than political parties, except projects involving the construction, operation, or maintenance of any facility used or to be used as a place for sectarian religious instruction or worship;

(3) Contribute to the general welfare of the community;

(4) Provide employment for eligible individuals whose opportunities for other suitable public or private paid employment are poor;

(5) Result in an increase in employment opportunities for eligible individuals and will not result in the displacement of employed workers or impair existing contracts;

(6) Utilize methods of recruitment and selection which will assure that the maximum number of eligible individuals will have an opportunity to participate in the program;

(7) Ensure that, to the extent feasible, the program will serve the needs of minority eligible individuals in proportion to their number in the state;

(8) Ensure that safe and healthy conditions of work will be provided and that persons employed in community services jobs assisted under this subchapter shall be paid at least the minimum wage as established by the Fair Labor Standards Act; and

(9) Ensure that program employers provide personnel fringe benefits for participants. The coverage shall include workers' compensation, unemployment insurance, Federal Insurance Contributions Act, and other coverage as may be required by regulation or policy.

History. Acts 1985, No. 1031, § 5; A.S.A. 1947, § 81-1511.

U.S. Code. The Fair Labor Standards

Act, referred to in this section, is codified as 29 U.S.C. § 201 et seq.

SUBCHAPTER 3 — COMMUNITY SERVICE AND COMMUNITY ACTION PROGRAM ACT OF 1985

SECTION.

- 20-80-301. Title.
- 20-80-302. Purpose.
- 20-80-303. Exception.
- 20-80-304. Recognition of agencies generally — Establishment of financial assistance.
- 20-80-305. Recognition of specific agencies — Jurisdiction.
- 20-80-306. Recognition of specific agencies — Change of boundaries and number.

SECTION.

- 20-80-307. Recognition of representative organizations.
- 20-80-308. Community Services Advisory Board.
- 20-80-309. Funding — Appropriations — Permitted use of funds.
- 20-80-310. Funding — Notification by General Assembly — Application.
- 20-80-311. Funding — Antipoverty programs.

Preambles. Acts 1985, No. 345 contained a preamble which read: "Whereas, community action organizations have been organized and are operational as non-profit corporations serving the low-income citizens of Arkansas; and

"Whereas, such agencies have been, and are now, providing human services in such fields as aging, health, transportation, nutrition, housing, home weatherization, developmental child care, family planning and other related activities which the General Assembly considers as vital to the well-being of lower-income persons of the State;

"Now therefore...."

Effective Dates. Acts 1985, No. 345, § 10: Mar. 13, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that Community Action Agencies provide services which are basic and essential to the well-being of low-income and economically disadvantaged persons of this State. It is further determined that the delivery of such services should be officially recognized in order to assure the continuation of such services, and to promote the development of new services to solve existing human service problems. Therefore, an

emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

20-80-301. Title.

This subchapter shall be known as the "Community Service and Community Action Program Act of 1985".

History. Acts 1985, No. 345, § 1;
A.S.A. 1947, § 83-1107.

20-80-302. Purpose.

(a) The purpose of this subchapter is to encourage nonprofit community action organizations which have been formed to provide basic and essential human services to low income and elderly citizens of Arkansas in the areas of health, transportation, housing, home repair and weatherization, aging programs and aging alternatives to institutionalization, developmental child care and enrichment, youth opportunity programs, low-income home energy assistance programs, and other related activities which the General Assembly recognizes as beneficial to a large number of Arkansas citizens.

(b) It is further the purpose of this subchapter to encourage and promote the operations and activities of community action agencies whether the activities are conducted by one (1) agency or by two (2) or more cooperating agencies.

History. Acts 1985, No. 345, § 1;
A.S.A. 1947, § 83-1107.

20-80-303. Exception.

Nothing in this subchapter is intended to change or in any way conflict with the status, boundaries, or functions of regional or metropolitan planning commissions or councils of governments established under §§ 14-17-301 — 14-17-309 and 14-56-501 — 14-56-509 nor the status, boundaries, and functions of planning and development districts as established and recognized under §§ 14-166-201 — 14-166-205.

History. Acts 1985, No. 345, § 2;
A.S.A. 1947, § 83-1108.

20-80-304. Recognition of agencies generally — Establishment of financial assistance.

In furtherance of the purposes of this subchapter, the General Assembly recognizes community action organizations in their efforts to provide services beneficial to low-income citizens of this state and establishes a program of financial assistance to recognized community action agencies to enable them to continue and expand activities and programs stated in § 20-80-302.

History. Acts 1985, No. 345, § 1;
A.S.A. 1947, § 83-1107.

20-80-305. Recognition of specific agencies — Jurisdiction.

The General Assembly recognizes as community action agencies and their jurisdiction, the following nineteen (19) existing community action organizations:

(1) Arkansas River Valley Council, consisting of Franklin, Scott, Yell, Johnson, Pope, Conway, Perry, Logan, and Polk Counties;

(2) Black River Area Development Corporation, consisting of Randolph, Clay, and Lawrence Counties;

(3) Central Arkansas Development Council, consisting of Saline, Hot Spring, Clark, Pike, and Montgomery Counties;

(4) Community Action Program for Central Arkansas, consisting of White, Faulkner, and Cleburne Counties;

(5) Crowley's Ridge Development Council, Inc., consisting of Craighead, Greene, Jackson, and Poinsett Counties;

(6) Crawford-Sebastian Community Development Council, Inc., consisting of Crawford and Sebastian Counties;

(7) Community Services Office, Inc., consisting of Garland County;

(8) East Central Arkansas Economic Opportunity Corporation, consisting of Cross, St. Francis, Woodruff, Crittenden, and Lee Counties;

(9) Economic Opportunity Agency of Pulaski County, consisting of Pulaski and Lonoke Counties;

(10) Economic Opportunity Agency of Washington County, consisting of Washington County;

(11) Arkansas Economic Opportunity Commission, Inc., consisting of Mississippi County;

(12) Mid-Delta Community Services, Inc., consisting of Phillips, Monroe, and Prairie Counties;

(13) Northcentral Arkansas Development Council, consisting of Fulton, Izard, Sharp, Stone, and Independence Counties;

(14) Office of Human Concern, consisting of Benton, Carroll, and Madison Counties;

(15) Ozark Opportunities, Inc., consisting of Van Buren, Searcy, Boone, Marion, Baxter, and Newton Counties;

(16) Pine Bluff-Jefferson County Economic Opportunity Commission, Inc., consisting of Jefferson, Grant, Arkansas, Lincoln, and Cleveland Counties;

(17) South Central Community Action Authority, consisting of Ouachita, Columbia, Calhoun, Dallas, and Union Counties;

(18) Southeast Arkansas Community Action Corporation, consisting of Bradley, Drew, Desha, Ashley, and Chicot Counties; and

(19) Southwest Arkansas Development Council, Inc., consisting of Little River, Hempstead, Miller, Lafayette, Howard, Sevier, and Nevada Counties.

History. Acts 1985, No. 345, § 2;
A.S.A. 1947, § 83-1108.

20-80-306. Recognition of specific agencies — Change of boundaries and number.

The appropriate division of the Department of Human Services is authorized to change the boundaries and the number of officially recognized community action agencies, provided that concurrence therein is obtained of the governing boards of each of the affected existing agencies as recognized in § 20-80-305.

History. Acts 1985, No. 345, § 2;
A.S.A. 1947, § 83-1108.

20-80-307. Recognition of representative organizations.

(a) The governing boards of directors of the nineteen (19) existing community action organizations are recognized as the representative organizations of the community action agencies as recognized in § 20-80-305.

(b) The appropriate division of the Department of Human Services is authorized, whenever agency boundaries have been changed in accordance with § 20-80-306, to recognize the representative organizations of the new community action agencies.

(c) In order to qualify for recognition and further benefits under this subchapter, a community action agency shall have been organized and constituted under the provisions of the Community Service Block Grant Act of 1981 and shall have a governing board whose numbers are elected and are representatives of specific community interests in accordance with the Community Service Block Grant Act of 1981.

History. Acts 1985, No. 345, § 3; Block Grant Act of 1981, referred to in this
A.S.A. 1947, § 83-1109. section, is codified as 42 U.S.C. § 9901 et
U.S. Code. The Community Service seq.

20-80-308. Community Services Advisory Board.

(a) The Governor shall appoint a nine-person Community Services Advisory Board to advise him or her and make recommendations to him or her concerning matters affecting low-income persons in the state.

(b) The board shall provide to the Governor an annual report on poverty conditions in the state.

(c) Board members shall serve terms concurrent with the Governor's term of office.

(d) The board shall be made up as follows:

(1) Three (3) executive directors of community action agencies, one of whom must be the President of the Arkansas Community Action Agencies Association;

(2) Three (3) members from the boards of directors of community action agencies;

(3) Three (3) members from the public who have received assistance or services from the community action agencies;

(4) The deputy director of the appropriate division of the Department of Human Services shall serve as an ex officio member of the board.

(e) The board shall elect a chair and other officers it deems necessary. The board shall meet at the call of the chair but no less than quarterly.

(f) The appropriate division shall provide technical assistance and reimbursement for the expenses of the board in accordance with § 25-16-901 et seq.

History. Acts 1985, No. 345, § 4; A.S.A. § 10 abolished the Community Services 1947, § 83-1110; Acts 1997, No. 250, Advisory Board.
§ 209.

Amendments. The 1997 amendment rewrote (f).

Publisher's Notes. Acts 1989, No. 536,

20-80-309. Funding — Appropriations — Permitted use of funds.

(a) The appropriate division of the Department of Human Services is authorized to make payments from time to time to officially recognized organizations of community action agencies from state funds appropriated for that purpose. Payments shall be scheduled to begin as nearly as possible on July 1 of each fiscal year and on the first day of each calendar quarter thereafter.

(b) Funds appropriated for payments to the organizations of community action agencies shall be allocated on the basis of equitable criteria established by the appropriate division based upon application for programs.

(c) If any change occurs in the jurisdictions of any of the officially recognized nineteen (19) community action agencies, as authorized in § 20-80-306, the first allocation of appropriated funds to the former agency or agencies, which comprise counties reorganized under the jurisdiction of a newly recognized agency, shall be apportioned to the new agency or agencies in accordance with equitable criteria established by the appropriate division.

(d)(1)(A) At least ninety percent (90%) of the funds received and appropriated by the state from the United States Government under the community services block grant shall be allocated to community action agencies, as defined in this subchapter, under a formula to be determined by the appropriate division which is designated as the disbursing agency for community services block grant funds.

(B) The powers of every community action agency governing board shall include the power to appoint persons to senior staff positions to determine major personnel, fiscal, and program policies to approve overall program plans and priorities and to assure compliance with conditions of and approve proposals for financial assistance under this subchapter.

(C) No more than five percent (5%) of the community services block grant may be used by the disbursing agency for administrative purposes.

(D) Any subsequently remaining funds may be used for purposes to be determined by the disbursing agency.

(2) In the event that the community services block grant is eliminated, each community action agency shall be funded, subject to the restrictions of applicable law or regulation, in the distribution of other federal funds which can be used to support antipoverty programs.

History. Acts 1985, No. 345, § 5;
A.S.A. 1947, § 83-1111.

20-80-310. Funding — Notification by General Assembly — Application.

(a) Whenever the General Assembly has appropriated funds in order to make payments to officially recognized community action agencies as authorized in this subchapter, the appropriate division of the Department of Human Services shall notify the respective governing boards of the agencies of the amount allocated to the agency as provided in § 20-80-308 and shall notify the respective boards that application for the funds may be made upon forms provided therefor by the appropriate division.

(b) Upon the receipt of application for the funds, the appropriate division shall determine that the following conditions have been met before disbursing the payments:

(1) The community action organization is an officially recognized community action agency, in accordance with §§ 20-80-305 and 20-80-306 and has been constituted in accordance with § 20-80-307(c);

(2) The agency board of directors shall certify that a proposed budget has been established for the expenditure of state funds for purposes consistent with the purpose of this subchapter.

(c) At the end of each fiscal year, an audited report of each community action agency shall be submitted to the appropriate division.

(d) Any amounts of state funds unexpended or unobligated by June 30 shall be returned by the agency to the State Treasury.

(e) If any community action agency shall have expended any state funds for any purpose not within the purpose and intent of this subchapter, that amount shall be reimbursed by the agency to the State of Arkansas before any additional payments may be made to the agency.

History. Acts 1985, No. 345, § 6;
A.S.A. 1947, § 83-1112.

20-80-311. Funding — Antipoverty programs.

State funds appropriated by the General Assembly to the appropriate division of the Department of Human Services for payments to be made to recognize community action agencies in accordance with this subchapter shall be used by the agencies for funding antipoverty programs designated by state regulations.

History. Acts 1985, No. 345, § 7;
A.S.A. 1947, § 83-1113.

SUBCHAPTER 4 — COMMISSIONER OF STATE LANDS URBAN HOMESTEAD ACT

SECTION.

20-80-401. Title.

20-80-402. Purpose.

20-80-403. Definitions.

20-80-404. Commissioner of State Lands' Duties.

20-80-405. Applications for donations.

20-80-406. Disposition of applications — Prior municipal approval.

SECTION.

20-80-407. Contracts or deeds.

20-80-408. Taxes — Liens — Encumbrances.

20-80-409. Title transfer — Consideration — Costs.

20-80-410. Development.

20-80-411. Restrictions — Taxes.

20-80-401. Title.

This subchapter shall be known as the "Commissioner of State Lands Urban Homestead Act".

History. Acts 1993, No. 1009, § 1.

20-80-402. Purpose.

(a) This subchapter shall apply only to urban property and shall be established to prevent waste of valuable real property already offered for public sale and not disposed of which has been certified to the office of the Commissioner of State Lands for nonpayment of ad valorem real property taxes.

(b) The further intent of this section is to provide cities, incorporated towns, and community organizations the ability to better serve any eligible person in need of a homestead and to provide the eligible person the opportunity to hold and maintain a private residence, and to contribute to the taxing structure of the applicable taxing units.

History. Acts 1993, No. 1009, § 3.

20-80-403. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Applicant" means any city, incorporated town, or community organization applying to the Commissioner of State Lands for donation of tax-forfeited land;

(2)(A) "Community organization" means a recreational, educational, social, or benevolent organization dedicated to improving the mental or physical health and welfare of its members and of the public.

(B) A community organization may be established for community betterment or beautification, environmental protection, establishment of housing, and other purposes beneficial to the community and may be a division of the federal, state, county, or local government or may be a private nonprofit corporation;

(3) "Eligible person" means an individual person or family unit meeting eligibility criteria for the sale, lease, or grant of a homestead. A corporation, partnership, association, or similar organization shall not be an eligible person;

(4) "Homestead" means the home and accompanying or adjoining land of the primary residence of a person; and

(5) "Urban" means land found within the city limits of any city or incorporated town in the state.

History. Acts 1993, No. 1009, § 2.

20-80-404. Commissioner of State Lands' Duties.

(a) All land subject to donation under this subchapter must have been offered for sale to the highest bidder by the Commissioner of State Lands pursuant to § 26-37-101 et seq.

(b) After the Commissioner of State Lands has met the requirements of § 26-37-101 et seq., the Commissioner of State Lands may accept applications for donation of remaining tax-forfeited urban property.

(c) The Commissioner of State Lands shall prescribe the requisite contracts, forms, or applications.

History. Acts 1993, No. 1009, § 4.

20-80-405. Applications for donations.

(a)(1) Applications for donation may be made by the following persons or community organizations:

(A) Agents of cities and incorporated towns which also have one (1) of the community organizations listed in subdivisions (a)(1)(B)(i)-(iv) of this section;

(B) The chair of the board or executive director of one (1) of the following community organizations:

(i) A housing authority;

(ii) A community development agency;

(iii) A community development corporation; or

(iv) A local initiative support corporation.

(2) Other community organizations may apply for donation of the land so long as that organization is a nonprofit corporation which qualifies as an Internal Revenue Service Section 501(c)(3) tax-exempt organization.

(b) Any applicant must have legal authority to accept and convey title to properties for homesteading purposes.

History. Acts 1993, No. 1009, §§ 5, 6. tion, is probably a reference to 26 U.S.C.

U.S. Code. Internal Revenue Service § 501(c)(3).
Section 501(c)(3), referred to in this sec-

20-80-406. Disposition of applications — Prior municipal approval.

(a) The Commissioner of State Lands may accept, modify, or deny any application.

(b) Before the Commissioner of State Lands may donate any parcel to any applicant, other than agents of a city or incorporated town, the

city or town shall grant express approval of the donation, thereby avoiding possible conflicts in planning or development projects overseen by the cities or towns of this state.

History. Acts 1993, No. 1009, §§ 7, 8.

20-80-407. Contracts or deeds.

(a)(1) Accepted applications will result in a contract or limited warranty donation deed between the Commissioner of State Lands and applicant for donation of tax-forfeited lands.

(2) The contract or deed, to be provided by the Commissioner of State Lands, shall provide that the applicant will have primary responsibility for the development of the donated parcel.

(3) The contract or deed shall also set out the eligibility criteria for determining an eligible person with respect to a sale, lease, or grant of a homestead from the donated parcel and shall require the applicant to follow the eligibility criteria in making sales, leases, or grants from the donated parcel.

(b) Upon execution of a donation deed to the applicant, the Commissioner of State Lands may no longer be an immediate party to the construction or maintenance of the parcel, except that the contract or donation deed may contain a possibility of reverter to the Commissioner of State Lands should the proposed homestead, for any reason, not develop pursuant to specifications.

(c) In addition, the contract or deed may provide the time period within which the property may be developed.

History. Acts 1993, No. 1009, § 8.

20-80-408. Taxes — Liens — Encumbrances.

(a) With execution of the donation deed, the Commissioner of State Lands may waive outstanding taxes, penalties, and interest within the authority of the office of the State Lands Commissioner.

(b) Other liens or encumbrances attached to the property not within the Commissioner's authority pursuant to § 26-37-101 et seq. will be considered a matter to be resolved between the applicant and the lienholder.

History. Acts 1993, No. 1009, § 9.

20-80-409. Title transfer — Consideration — Costs.

(a) No consideration shall be required for the transfer of title between the Commissioner of State Lands and the applicant, except one dollar (\$1.00).

(b) Additional, actual costs associated with the conveyance, including, but not limited to, abstracting, researching, confirmation of title, and the filing of documents with the county, may be charged to the applicant by the Commissioner of State Lands.

History. Acts 1993, No. 1009, § 10.

20-80-410. Development.

(a)(1) Development of the donated parcel shall be strictly for the construction or maintenance of a homestead for eligible persons.

(2) Upon completion of the construction of the home, the city, incorporated town, or community organization may sell, lease, or grant the home to any eligible person.

(b)(1) The homestead is to be used strictly for the private residence of the eligible person.

(2) The sale, lease, or grant of the home shall be a transaction between the applicant and the eligible person.

History. Acts 1993, No. 1009, §§ 11, 12.

20-80-411. Restrictions — Taxes.

(a) The applicant is responsible for transferring the donated parcel to an eligible person.

(b) The eligibility criteria for the sale, lease, or grant of a homestead shall be established by the Commissioner of State Lands and shall take into account the income of the person or family unit, which shall not exceed the median family income, as determined by the United States Department of Housing and Urban Development, for the area in which the applicant is located.

(c) Upon transferring the land to the eligible person, the homestead will be treated as any other private residence and subject to all laws and regulations of the government, including the payment of real property taxes.

History. Acts 1993, No. 1009, §§ 2, 13.

CHAPTER 81

VETERANS' AFFAIRS

SECTION.

- 20-81-101. Arkansas Veterans' Child Welfare Service.
- 20-81-102. Department of Veterans' Affairs — Creation — Powers and duties.
- 20-81-103. Department of Veterans' Affairs — Appointment of director — Employees.
- 20-81-104. Arkansas Veterans' Commission.
- 20-81-105. Veterans' Home.

SECTION.

- 20-81-106. County programs.
- 20-81-107. Gifts, volunteer services, etc.
- 20-81-108. Action by municipal governing bodies.
- 20-81-109. Cooperation of other state agencies.
- 20-81-110. Official flower — Poppy.
- 20-81-111. Entitlement of all veterans to privileges.
- 20-81-112. State veterans' cemetery system.

Preambles. Acts 1939, No. 189 contained a preamble which read: "Whereas, more than two million men were sent across the seas to fight the World War and they saw the beautiful red poppy on every hand in France; and

"Whereas, many soldiers of the war never came back, while

"In Flanders field the poppies grow

"Beneath the crosses row on row"; and

"Whereas, veterans after the World War resolved that if they should ever be organized, the poppy should be their official flower and that designation has been made; and

"Whereas, persons who never saw war service are selling artificial poppies without authority, thus imposing on the veterans and the public;

"Now, therefore...."

Acts 1969, No. 189, contained a preamble which read: "Whereas, thousands of children of War Veterans are given emergency services, such as food, shelter and clothing each month while arrangements are being made to take care of them through conventional welfare and relief agencies; and

"Whereas, this invaluable humane obligation, assumed by the American Legion's Child Welfare Division since 1923, has assisted children and families in every county in the state when no other help was readily available; and

"Whereas, through the American Legion, in Arkansas, more than 400 volunteer posts and American Legion Auxiliary service officers and child welfare chairmen are available on a 24-hour, seven-day-a-week basis to render this vital free service to children of all war veterans, regardless of race, creed or color; and

"Whereas, The American Legion and The American Legion Auxiliary continues to support this program financially through its numerous posts and units; and

"Whereas, with the annual return of more than 5,000 veterans of the Vietnam War to Arkansas the demand for these services will increase tremendously; and

"Whereas, no other such emergency assistance is provided in this state;

"Now, therefore"

Effective Dates. Acts 1939, No. 189, § 4: effective on passage.

Acts 1969, No. 189, § 3: Mar. 7, 1969. Emergency clause provided: "It is hereby

found and determined by the General Assembly that the functions, duties and services of the Child Welfare Division of the Arkansas Veterans Service Office have expanded tremendously; that in order to properly administer such services under a unified program, it is necessary that this Act become effective immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall become effective from and after its passage and approval."

Acts 1973, No. 251, § 2: approved Mar. 9, 1973. Emergency clause provided: "This act is declared to be in the interest of preserving the public peace, health, and safety of state government; and to entitle the veterans of the Vietnam War to the same preferences and privileges as are provided the veterans of the World Wars, the Korean War, and all other wars. An emergency is hereby declared to exist, and this Act shall take effect immediately upon date of passage."

Acts 1979, No. 324, § 18: July 1, 1979. Emergency clause provided: "It is hereby found and determined by the Seventy-Second General Assembly, that the effectiveness of this Act on July 1, 1979 is essential to the operation of the agency established in this Act and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1979 could work irreparable harm upon the proper administration and providing of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1979."

Acts 1985, No. 431, § 2: Mar. 20, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that it is necessary to clarify the authority of the Arkansas Department of Veterans Affairs to accept the donation of real property for use as veterans cemeteries; that certain individuals and organizations desire to donate real property to the Department; that there is insufficient access to a national veterans cemetery for many Arkansas veterans; and that this Act is immediately necessary to alleviate the problem. Therefore, an emergency is

hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 157, § 4: Mar. 10, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Arkansas Veterans Home should already have been converted to a nursing home facility; that legislation was enacted in 1985 to accomplish the same but has not been properly interpreted; that our veterans are suffering undue hardship as a result of this delay, and that the hardship will continue until the conversion of the facility; that the increasing age of Arkansas veterans increases the need for the conversion on a daily basis; and this Act will provide for the expedient conversion of the Veterans Home into a nursing home facility. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 202, § 14: July 1, 1987. Emergency clause provided: "It is hereby found and determined by the Seventy-Sixth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1987 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1987 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1987."

Acts 1989 (1st Ex. Sess.), No. 217, § 14: July 1, 1989. Emergency clause provided: "It is hereby found and determined by the Seventy-Seventh General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1989 is essential to the operation of the agency for

which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1989 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1989."

Acts 1993, No. 719, § 5: Mar. 25, 1993. Emergency clause provided: "It is hereby found and determined by the Seventy-Ninth General Assembly of the State of Arkansas that Arkansas law specifies the qualification for the Director of the Department of Veterans' Affairs; that three (3) years residency is presently required to qualify for appointment as Director; that such a long period of time for residency precludes many qualified people from being eligible for appointment to this important position, and that the qualifications should be changed immediately. Therefore, an emergency is hereby declared to exist, and this act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

RESEARCH REFERENCES

Am. Jur. 77 Am. Jur. 2d, Veterans, § 1
et seq.

20-81-101. Arkansas Veterans' Child Welfare Service.

(a)(1) There is established the Arkansas Veterans' Child Welfare Service.

(2) The service shall be under the direction of a director to be named by the Governor upon written recommendation by the governing body of the American Legion Department of Arkansas.

(3) The Director of the Department of Veterans' Affairs shall serve at the pleasure of the Governor.

(b)(1) The service shall establish a program of furnishing temporary and interim welfare and rehabilitation services and assistance for minor children of honorably discharged Arkansas veterans who are deceased or medically incapacitated.

(2) The service is authorized to enter into contracts and agreements with one (1) or more veterans' organizations in this state, with private individuals or corporations, or with the federal government for the sharing of facilities or services and for the administration of funds in furtherance of veterans' child welfare services.

(c) Funds granted to the service, other than state-appropriated funds, may be deposited in one (1) or more bank accounts in banks in this state and shall be administered in accordance with purposes for which the funds were granted as authorized in this section.

History. Acts 1969, No. 189, § 1; A.S.A. 1947, § 11-1409; Acts 1997, No. 100, § 1.

Publisher's Notes. Acts 1969, No. 189, § 1, provided, in part, that all functions, powers, and duties of the Child Welfare Division of the Arkansas Veterans' Service Office and all of its books, furnishings, records, and funds should be transferred to and administered by the Arkansas Veterans' Child Welfare Service.

Amendments. The 1997 amendment, in (b)(1), inserted "minor" preceding "children" and substituted "honorably discharged Arkansas veterans who are deceased or medically incapacitated" for "hospitalized or deceased Arkansas veterans."

20-81-102. Department of Veterans' Affairs — Creation — Powers and duties.

(a) There is created the Department of Veterans' Affairs.

(b) The department shall:

(1) Supervise the operation of the Veterans' Home; and

(2) Supervise the activities, training, and testing of the County Veterans' Service officers located throughout the State of Arkansas.

(c) The department is authorized to develop and promulgate all rules and regulations necessary for the enforcement and implementation of

the provisions of this act and all applicable federal rules and regulations.

History. Acts 1979, No. 324, §§ 1, 2; A.S.A. 1947, §§ 11-1410, 11-1411.

Publisher's Notes. Acts 1979, No. 324, § 1, provided, in part, that the Department of Veterans' Affairs should assume all duties and responsibilities of assisting veterans and their dependents and survi-

vors in securing their rights and benefits formerly held by the Arkansas Veterans' Service Office.

Meaning of "this act". Acts 1979, No. 324, codified, as §§ 20-81-102 — 20-81-109, 25-15-202, 26-52-401.

20-81-103. Department of Veterans' Affairs — Appointment of director — Employees.

(a) The Governor is authorized to appoint a qualified Director of the Department of Veterans' Affairs who shall have served in the armed forces of the United States during armed conflict as set forth by Congress, who has been honorably discharged therefrom, and who shall have been a resident of the State of Arkansas for two (2) years preceding his or her appointment.

(b) The director shall promote and supervise the dissemination of all available information concerning the rights of all veterans and their dependents.

(c) The director shall maintain his or her office in space provided by the Department of Veterans Affairs Regional Office Building in Little Rock, Arkansas, and may establish, maintain, and operate such other offices within the State of Arkansas as may be necessary.

(d) The director is authorized to employ an assistant director and such other employees, full-time or part-time, as may be determined necessary, subject to approval of the Governor and within the limits of the funds appropriated therefor.

(e)(1) All veterans' claims specialists shall have served in the armed forces of the United States during armed conflict, as set forth by Congress, and shall have been honorably discharged therefrom. They shall have been citizens of the State of Arkansas for a period of three (3) years prior to appointment.

(2) All veterans' claims specialists of the Department of Veterans' Affairs shall familiarize themselves with all laws, both federal and state, relating to rights and benefits of all veterans and their dependents and shall aid and assist all veterans and their dependents in securing their rights and benefits.

(f)(1) All employees under the supervision of the department shall not for themselves accept, receive, or charge any money, article, or thing of value for the performing of any service rendered to any veteran or his or her dependents at any time or in any manner.

(2) Any person who shall violate the provisions of this subsection shall be deemed guilty of a misdemeanor and upon conviction shall be fined not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500), or imprisoned not less than thirty (30) days nor more than six (6) months, or both.

History. Acts 1979, No. 324, §§ 3, 4, 7, 11-1416, 11-1417, 11-1421; Acts 1993, No. 8, 12; A.S.A. 1947, §§ 1-1412, 11-1413, 719, § 1.

20-81-104. Arkansas Veterans' Commission.

(a) The Arkansas Veterans' Commission is established to serve as an advisory agency to the Veterans' Home.

(b)(1) The commission shall be composed of fifteen (15) members, who shall be appointed by the Governor and confirmed by the Senate.

(2) Members of the commission shall serve for five-year overlapping terms.

(3) The commission shall annually elect its chair from among its membership.

(4)(A) Members of the commission may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

(B) Members of the commission are also authorized to attend conventions, conferences, or meetings of recognized veterans' organizations, herein defined as veterans' organizations listed in the current United States Department of Veterans Affairs Directory of Veterans' Organizations as meeting the criteria of 38 C.F.R. 14.628, and are entitled to reimbursement for expenses incurred in attending those conventions, conferences, or meetings in accordance with procedures and limits prescribed by law or regulation for state employees.

(C) Provided, a member of the commission shall not be entitled to receive more than one thousand dollars (\$1,000) during any fiscal year for stipends and reimbursement of expenses incurred as a member of the commission.

(c)(1) The commission shall make recommendations to the Director of the Department of Veterans' Affairs for the operation and improvement of the home.

(2) It shall also act as an advisory board to the General Assembly on all other matters affecting Arkansas veterans, their dependents, and survivors.

(d) Quarterly meetings of the commission are authorized at the call of the chair.

History. Acts 1979, No. 324, § 13; A.S.A. 1947, § 11-1422; Acts 1991, No. 670, § 1; 1993, No. 136, § 1; 1997, No. 250, § 210; 1999, No. 634, § 1.

Publisher's Notes. The terms of members of the Task Force on Veteran's Affairs are staggered so that three (3) terms expire every year.

Amendments. The 1997 amendment rewrote (b)(4).

The 1999 amendment substituted "The Arkansas Veterans' Commission" for "Governor's Commission on Veterans' Affairs" in (a); substituted "commission" for "Governor's Commission on Veterans' Affairs" in (c)(1); and made stylistic changes.

20-81-105. Veterans' Home.

(a) The Department of Veterans' Affairs is authorized to establish and maintain a Veterans' Home in the building formerly used as the

School for the Blind and the Arkansas School for the Deaf at Twentieth and Madison Streets in Little Rock, Arkansas.

(b) The department is authorized to employ staff to operate the home as it deems appropriate and as may be authorized by biennial appropriation.

(c)(1) The home shall be operated under the supervision of the department.

(2) The Director of the Department of Veterans' Affairs shall be the administrative head of the home.

(d)(1) The department shall promulgate appropriate guidelines for determining eligibility of veterans for admission to the home, and the monetary charges to be made for veterans residing in the home. All guidelines shall conform to the federal requirements which must be met to qualify the home as a nursing home and domiciliary for veterans and to render the home eligible to receive federal financial assistance.

(2)(A) Notwithstanding the provisions of § 20-8-101 et seq., the home may be converted to a nursing home and domiciliary for veterans without obtaining a certificate of need therefor.

(B) Bed capacity will be limited to seventy (70), and no beds shall be designated for Medicaid payment.

(e) In the administering of the home, the director is specifically authorized to do the following:

(1) Establish accounts to record the receipt and disbursement of funds from resident veterans to pay for a portion of their maintenance at the home;

(2) Develop policies for determining charges to be made to resident veterans;

(3) Develop accounts and procedures pertaining to incompetent residents of the home;

(4) Establish procedures and accounts for payment by the home to its residents for work performed at the home;

(5) Establish such other accounts as are necessary to the orderly administration of the home; and

(6) Establish policies necessary for the operation of the home.

(f) The director shall, at the end of each fiscal year, certify to the Chief Fiscal Officer of the State the amount of nonrevenues to be retained in the State General Services Fund Account. All other moneys shall be transferred to the General Revenue Allotment Reserve Fund in accordance with existing laws.

History. Acts 1979, No. 324, §§ 5, 6; 1985, No. 432, § 1; A.S.A. 1947, §§ 11-1414, 11-1415; Acts 1987, No. 157, § 2; 1987, No. 202, § 10; 1989 (1st Ex. Sess.), No. 217, § 10; 1999, No. 634, § 2.

Publisher's Notes. Acts 1987, No. 157, § 1 provided that: "The General Assembly intended, through Acts 432 of 1985, Acts 578 of 1985 and Act 175 of 1985, to provide for the conversion of the Arkansas Veter-

ans Home to a nursing home and domiciliary for veterans without the necessity of obtaining a certificate of need. However, there still appears to be confusion regarding whether the Veterans Home must obtain a certificate of need in order to convert to a nursing home, and it is the intent of the General Assembly through this Act to make more clear its intent to authorize and direct the conversion of the Arkansas

Veterans Home to a nursing home and domiciliary without obtaining a certificate of need. Therefore, this Act shall be interpreted and construed in whatever manner necessary to provide for the conversion without obtaining a certificate of need."

Amendments. The 1999 amendment,

in (c)(2), substituted "director" for "Director of the Department of Veterans' Affairs" and deleted "and shall have the additional title of Commandant, Arkansas Veterans' Home" following "Veterans' Home."

Cross References. State funds and accounts, § 19-5-201 et seq.

20-81-106. County programs.

(a) The Department of Veterans' Affairs is authorized to establish, implement, and maintain a program for providing financial assistance to the counties to assist the counties in paying the salaries and expenses of county veterans' service officers.

(1) Any program established and maintained by the Department of Veterans' Affairs shall provide for financial assistance to applying counties on the basis of one dollar (\$1.00) of state funds for each two dollars (\$2.00) of county funds provided for the payment of the salary and expenses of the particular veterans' service officer of the applying county.

(2) No county shall receive financial assistance under the provisions of this act in excess of three thousand six hundred dollars (\$3,600) in any fiscal year. However, the financial assistance to counties under this section may be increased to a maximum of four thousand eight hundred dollars (\$4,800) per year for those counties wherein the veteran population exceeds two thousand five hundred (2,500) veterans as reflected by the latest United States Department of Veterans Affairs report on veteran population.

(3) Assistance grants pursuant to this section may be made only to those counties employing a county veterans' service officer who meets the training and testing qualifications, scheduled number of work hours per month, and other qualifications prescribed by the Department of Veterans' Affairs for county veterans' service officers.

(b)(1) The county veterans' service officers shall serve at the pleasure of the individual incumbent county judge in his or her respective county.

(2) However, supervision, training, and testing of county veterans' service officers shall be the responsibility of the Department of Veterans' Affairs.

History. Acts 1979, No. 324, § 11; A.S.A. 1947, § 11-1420; Acts 1989 (1st Ex. Sess.), No. 217, § 7.

Meaning of "this act". See note to § 20-81-102.

20-81-107. Gifts, volunteer services, etc.

(a) The Director of the Department of Veterans' Affairs is authorized to arrange for and accept through such mutual arrangement as may be made the volunteer services, equipment, gifts, facilities, properties, supplies, and personnel of any state, county, and municipal offices and

agencies and of veterans' fraternal, welfare, civic, and service organizations in the furtherance of the purposes of this act.

(b) The director may accept on behalf of the Department of Veterans' Affairs from any natural person or legal entity the donation of real property for use as a cemetery for the interment of Arkansas veterans of the United States armed forces and their immediate next of kin as defined by the department.

History. Acts 1979, No 324, § 9; 1985, No. 431, § 1; A.S.A. 1947, §§ 11-1418, 11-1423. **Meaning of "this act".** See note to § 20-81-102.

20-81-108. Action by municipal governing bodies.

(a) County quorum courts, city councils, and other municipal governing bodies are authorized to appropriate money for the purpose of maintaining county and municipal offices jointly with the Department of Veterans' Affairs, on either a full-time or part-time basis.

(b) All offices shall be under the supervision of the Director of the Department of Veterans' Affairs, and all work of the offices shall be coordinated with the department.

History. Acts 1979, No. 324, § 10; A.S.A. 1947, § 11-1419.

20-81-109. Cooperation of other state agencies.

It shall be the duty of all state, county, and municipal offices and agencies legally concerned with and interested in the welfare of veterans and their dependents to cooperate with the Department of Veterans' Affairs in carrying out the purposes of this act.

History. Acts 1979, No. 324, § 9; A.S.A. 1947, § 11-1418. **Meaning of "this act".** See note to § 20-81-102.

20-81-110. Official flower — Poppy.

(a) The poppy is designated the official flower of World War veterans.

(b) It shall be unlawful for any person, firm, corporation, association, or organization, except patriotic organizations chartered by authority of a special act of Congress and the auxiliaries of such organizations, to sell artificial poppies other than within a regular established place of business. This exclusive authority is granted on the condition that all profits accruing therefrom shall be expended on disabled veterans of the World War and their dependents.

(c) Whoever shall violate any provisions of this section shall be fined not less than ten dollars (\$10.00) nor more than fifty dollars (\$50.00).

History. Acts 1939, No. 189, §§ 1-3; A.S.A. 1947, §§ 11-1708 — 11-1710.

20-81-111. Entitlement of all veterans to privileges.

The soldiers, sailors, and marines who were disabled in military service during the World Wars, Korean War, and Vietnam War and the dependents of the soldiers, sailors, and marines are entitled to the same privileges as are now enjoyed by all other veterans.

History. Acts 1959, No. 423, § 1; 1973, No. 251, § 1; A.S.A. 1947, § 11-1711.

20-81-112. State veterans' cemetery system.

(a) The Department of Veterans' Affairs is authorized to establish and maintain an Arkansas state veterans' cemetery system to serve the veterans, spouses, and eligible dependents of the veterans of Arkansas.

(b) The department is authorized to employ staff to operate this cemetery system as it deems appropriate and as may be authorized by biennial appropriation.

(c) The department shall:

(1) Promulgate appropriate guidelines for determining eligibility for burial;

(2) Establish accounts as are necessary to the orderly administration of the cemetery system;

(3) Develop plans and programs which will provide for initial establishment of sites to meet the greatest need and provide for their orderly expansion; and

(4) Make applications to federal agencies such as the United States Department of Veterans Affairs and receive federal funding as is available to establish and operate this cemetery system.

History. Acts 1997, No. 235, § 1.

CHAPTER 82

VICTIMS OF VIOLENT CRIMES

SUBCHAPTER.

1. GENERAL PROVISIONS. [RESERVED.]
2. ARKANSAS CHILD ABUSE/RAPE/DOMESTIC VIOLENCE COMMISSION.

SUBCHAPTER 1 — GENERAL PROVISIONS

[Reserved]

SUBCHAPTER 2 — ARKANSAS CHILD ABUSE/RAPE/DOMESTIC VIOLENCE COMMISSION

SECTION.

20-82-201. Arkansas Child Abuse/Rape/
Domestic Violence Com-
mission — Creation —
Members.

SECTION.

20-82-202. Arkansas Child Abuse/Rape/
Domestic Violence Com-
mission — Powers and du-
ties.

SECTION.

20-82-203. [Repealed.]

20-82-204. Arkansas Child Abuse/Rape/
Domestic Violence Commission — Costs and expenses.20-82-205. Child Abuse/Rape/Domestic
Violence Section — Creation.

20-82-206. Child Abuse/Rape/Domestic

SECTION.

Violence Section — Powers
and duties.20-82-207. Child Abuse/Rape/Domestic
Violence Section — Budget
— Staff.20-82-208. Community Grants for Child
Advocacy Centers Program.

Effective Dates. Acts 1991, No. 727, § 9: July 1, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Child Abuse/Rape/Domestic Violence Commission created by this Act should go into effect on July 1, 1991; and that unless this emergency clause is adopted this Act may not go into effect until after July 1. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1991."

Acts 1991, No. 828, § 9: July 1, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Child Abuse/Rape/Domestic Violence Commission created by this Act should go into effect on July 1, 1991; and that unless this emergency clause is adopted this Act may not go into effect until after July 1. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1991."

Acts 1993, No. 887, § 11: Apr. 5, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that it is essential that the transfer of the Arkansas Child Abuse/Rape/Domestic Violence Commission to the office of Chancellor of the University of Arkansas for Medical Sciences be effected on July 1; that it is essential that the removal of the cap on the operating budget of the Commission for the 1991-93 biennium be removed immediately; and that this act should be given effect immediately to permit a smooth transition under this act and to remove the Commission's operating budget cap. Therefore, an

emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 1336, § 11: July 1, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that it is essential for the effective of administration of state government this act is necessary immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect on and after July 1, 1995."

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor [sic], it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2001, No. 1631, § 3: July 1, 2001. Emergency clause provided: "It is found and determined by the General Assembly, that the effectiveness of this act on July 1,

2001 is essential to the continued operations of the existing Child Advocacy Centers, and that in the event of an extension of the Regular Session, the delay in the effective date of this act beyond July 1, 2001 could work irreparable harm upon the proper administration and provision of essential government support of Child Advocacy Centers. Therefore, an emergency is declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2001."

Acts 2001, No. 1786, § 5: Apr. 19, 2001. Emergency clause provided: "It is found and determined by the Eighty-third General Assembly that immediate clarification is needed with regard to the authority to administer funds provided to the State of Arkansas under the federal Victims of Crime Act, the Violence Against Women

Act, and the Family Violence Prevention and Services Act; and that this act, in order to comply with federal law, removes state legislative restrictions on the administration of such funds where the federal government has previously enacted legislation or regulations governing the authority to administer these funds. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

20-82-201. Arkansas Child Abuse/Rape/Domestic Violence Commission — Creation — Members.

(a) There is hereby created the Arkansas Child Abuse/Rape/Domestic Violence Commission, to be composed of twenty-five (25) persons appointed by the Governor for two-year staggered terms and until the successor is appointed and qualified.

(b) The membership of the commission shall consist of the following:

(1) A representative of domestic violence programs or domestic violence service providers in Arkansas;

(2) A representative of the Department of Arkansas State Police;

(3) A physician specializing in the treatment of child abuse;

(4) A prosecuting attorney who is a member of the Arkansas Prosecuting Attorneys Association;

(5) A defense attorney;

(6) A representative of a victim-witness program;

(7) A representative of the Arkansas Law Enforcement Training Academy;

(8) A representative of education;

(9) A representative of the Division of Children and Family Services of the Department of Human Services;

(10) A representative of a parents' group;

(11) A mental health professional specializing in the treatment of child abuse or domestic violence or rape;

(12) A representative of the Department of Correction Sex Offender Treatment Program;

(13) A representative of city or county law enforcement;

(14) A representative of children with disabilities;

- (15) A municipal judge or circuit judge;
 - (16) A chancery judge;
 - (17) A representative of the State Crime Laboratory;
 - (18) A representative of the Department of Health;
 - (19) A representative of rape crisis centers;
 - (20) A representative of the Arkansas Hospital Association;
 - (21) A representative of the office of the Attorney General;
 - (22) Three (3) members at large;
 - (23) A court-appointed special advocate representative;
 - (24) A guardian ad litem; and
 - (25) A representative of area health education center programs.
- (c) Members of the commission may receive expense reimbursement in accordance with § 25-16-901 et seq.

History. Acts 1991, No. 727, §§ 1, 3; 1991, No. 828, §§ 1, 3; 1993, No. 175, § 1; 1993, No. 887, § 3; 1995, No. 1336, § 1; 1997, No. 250, § 211; 2001, No. 1285, § 1; 2001, No. 1288, § 19.

Amendments. The 1997 amendment rewrote (c).

The 2001 amendment by No. 1285 deleted "Arkansas" in (b)(12); deleted

(b)(13)-(14) and redesignated the remaining subsections accordingly; and made minor stylistic changes.

The 2001 amendment by No. 1288 substituted "Three (3) members" for "One (1) member" in present (b)(22).

Cross References. Jurisdiction of circuit courts, Ark. Const. Amend. 80, §§ 6, 19.

20-82-202. Arkansas Child Abuse/Rape/Domestic Violence Commission — Powers and duties.

The Arkansas Child Abuse/Rape/Domestic Violence Commission shall be an advisory body only and shall act in an advisory capacity to the Child Abuse/Rape/Domestic Violence Section of the office of the Chancellor of the University of Arkansas for Medical Sciences.

History. Acts 1991, No. 727, § 2; 1991, No. 828, § 2; 1993, No. 887, § 4; 1995, No. 1336, § 2.

20-82-203. [Repealed.]

Publisher's Notes. This section, concerning disbursement of funds, was repealed by Acts 2001, No. 1285, § 2 and

Acts 2001, No. 1786, § 3. The section was derived from Acts 1991, No. 727, § 4; 1991, No. 828, § 4; 1995, No. 1336, § 3.

20-82-204. Arkansas Child Abuse/Rape/Domestic Violence Commission — Costs and expenses.

The administrative and associated operating costs and expenses of the Arkansas Child Abuse/Rape/Domestic Violence Commission may be paid from and administered through the normal contractual processes of the University of Arkansas for Medical Sciences.

History. Acts 1991, No. 948, § 1; 1993, No. 887, § 6; 1995, No. 1336, § 4.

20-82-205. Child Abuse/Rape/Domestic Violence Section — Creation.

There is hereby created the Child Abuse/Rape/Domestic Violence Section within the office of the Chancellor of the University of Arkansas for Medical Sciences.

History. Acts 1993, No. 887, § 1; 1995, No. 1336, § 5.

20-82-206. Child Abuse/Rape/Domestic Violence Section — Powers and duties.

The Child Abuse/Rape/Domestic Violence Section within the office of the Chancellor of the University of Arkansas for Medical Sciences shall have the authority and responsibility to:

(1) Administer and disburse funds received through the Children's Justice Act, rape funds received through the preventive health services block grant, and any other federal and grant funds;

(2) Receive and expend grants, donations, and funds from public and private sources to carry out its responsibilities;

(3) Educate professionals, law enforcement officers, prosecuting attorneys, trial and appellate judges, municipal judges, Department of Human Services employees, and other victim service providers regarding issues, interventions, and other matters associated with child abuse, rape, and domestic violence;

(4) Research, develop, and disseminate resource materials as needed;

(5) Facilitate the development of and contract with local multidisciplinary teams throughout the state, the purpose of which is to provide coordinated investigation and service delivery to child victims of severe maltreatment;

(6) Authorize local multidisciplinary teams throughout the state to review instances of child deaths involving children ages birth through seventeen (17) years of age;

(7) Provide support, coordination, and technical assistance to providers of services for rape, domestic violence, and child abuse victims;

(8) Develop a database for use in Arkansas which addresses information about the effectiveness of treatment programs and other intervention efforts in the areas of domestic violence, child abuse, child sexual abuse, and rape and which focuses on interventions with victims, families, and perpetrators;

(9) Advise the Governor as to the immediate needs and priorities surrounding the issues of child abuse, domestic violence, and rape;

(10) Contract and be contracted with;

(11) Provide consultation and technical assistance to professionals regarding child abuse, rape, and domestic violence; and

(12) Work with the Area Health Education Center program of the University of Arkansas for Medical Sciences to research, develop, and disseminate resource materials for regions in the state.

History. Acts 1993, No. 887, § 2; 1995, No. 1336, § 6; 2001, No. 1285, § 3.

Amendments. The 2001 amendment inserted "within the Office of the Chancellor of the University of Arkansas for Medical Sciences" in the introductory language; substituted "seventeen (17)" for "eleven (11)" in (6); deleted (10) and red-

igned the remaining subdivisions accordingly; and made minor stylistic changes throughout.

U.S. Code. The Children's Justice Act, referred to in this section, is codified as 42 U.S.C. §§ 290dd-3, 290ee-3, 5101, 5101 notes, 5103, 5105, 10601, 10603, and 10603a.

20-82-207. Child Abuse/Rape/Domestic Violence Section — Budget — Staff.

The Child Abuse/Rape/Domestic Violence Section of the office of the Chancellor of the University of Arkansas for Medical Sciences shall consist of such staff and shall operate within such budget as may be authorized by the appropriation of federal funds by the General Assembly.

History. Acts 1993, No. 887, §§ 5, 7; 1995, No. 1336, § 7.

20-82-208. Community Grants for Child Advocacy Centers Program.

(a) **FINDINGS AND PURPOSE.** (1) The General Assembly finds and determines that:

(A) Abused children often have to describe their sexual or physical abuse several times to different professionals at different locations;

(B) Many child abuse investigations are conducted with little collaboration between the agencies involved in the cases;

(C) Each agency's child abuse professionals are housed in different facilities and, as a result, interface during the investigation and management of cases is limited;

(D) Sexual and physical abuse medical examinations are commonly performed in hospital emergency rooms and other sites that are frightening to children, lack the proper equipment, and often are staffed by physicians uncomfortable with these exams; and

(E) Child advocacy centers provide:

(i) A more child-friendly atmosphere;

(ii) Reduced trauma to the children and families;

(iii) Improved investigations and management;

(iv) More effective utilization of multiagency information;

(v) Greater protection of children;

(vi) Increased prosecution of perpetrators; and

(vii) Less unnecessary family intervention.

(2) The purpose of this section is to encourage the use of existing child advocacy centers and the development of new centers providing the benefits under one (1) roof. **ESTABLISHMENT AND AUTHORITY.**

(b) **ESTABLISHMENT AND AUTHORITY.** (1) There is established the Community Grants for Child Advocacy Centers Program.

(2) The Arkansas Child Abuse/Rape/Domestic Violence Commission shall advise the Child Abuse/Rape/Domestic Violence Section within

the office of the Chancellor of the University of Arkansas for Medical Sciences on the administration and monitoring of this grant program for the operation of existing child advocacy centers and the development of new centers in the State of Arkansas.

History. Acts 2001, No. 1631, §§ 1, 2.

CHAPTER 83

ARKANSAS FARMERS' MARKET NUTRITION PROGRAM ACT

SECTION.

20-83-101. Title.

20-83-102. Purpose.

20-83-103. Definitions.

20-83-104. Coupon administration.

SECTION.

20-83-105. Nutrition education.

20-83-106. Farmer or vendor participation.

20-83-107. Rules and regulations.

Effective Dates. Acts 1993, No. 1218, § 11: Apr. 19, 1993. Emergency clause provided: "It is hereby found and determined that certain individuals and families are nutritionally at risk due to a lack of fresh unprocessed food such as fruits and vegetables; that these foods are vital to the health, welfare and safety of the people of this state and a program providing these essential nutrients is necessary; this act will provide essential nutrition to

these individuals described herein and those needs will not be properly met until this program is in effect; and that the immediate passage of this act is necessary to accomplish the purpose stated herein. Therefore, an emergency is declared to exist and this act, being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effective from and after the date of its passage and approval."

20-83-101. Title.

This subchapter shall be known and may be cited as the "Arkansas Farmers' Market Nutrition Program Act".

History. Acts 1993, No. 1218, § 1.

20-83-102. Purpose.

This subchapter is to establish the Arkansas Farmers' Market Nutrition Program as a state-supported and state-funded program eligible to receive additional support and funding from any federal, public, or private resource for the following purposes:

(1) To provide nutritionally at-risk individuals and families nutrition education and fresh, locally grown fruits, nuts, and vegetables; and

(2) To expand public awareness and stimulate individual use of farmers' markets to increase the purchase of locally grown foods, thereby reducing the negative environmental impact of food packaging and shipping while enhancing a beneficial economic and social climate in the community.

History. Acts 1993, No. 1218, § 2.

20-83-103. Definitions.

As used in this subchapter:

(1) "ArFMNP" means the Arkansas Farmers' Market Nutrition Program;

(2) "Coupon" means a nontaxable nutrition supplement coupon issued and distributed by the program for redeeming locally grown foods as provided by this subchapter.

History. Acts 1993, No. 1218, § 3.

20-83-104. Coupon administration.

The Department of Health shall administer the Arkansas Farmers' Market Nutrition Program and shall establish the methods and procedures for selecting sites and issuing, distributing, and redeeming nontaxable nutrition supplement coupons pursuant to the following criteria:

(1) Coupons shall be distributed to optimize benefits to the greatest number of nutritionally at-risk individuals and families;

(2) Recipients shall receive coupons in an amount not less than ten dollars (\$10.00) per year and not in excess of twenty dollars (\$20.00) per year;

(3) Farmers' markets and farmers or vendors are targeted to optimize the economic benefits to small farmers; and

(4) The program operates in compliance with all federal Special Supplemental Food Program for Women, Infants and Children (WIC) Farmers' Market Nutrition Program criteria, including providing for administrative costs and assurances of civil rights and equal employment opportunity.

History. Acts 1993, No. 1218, § 4.

20-83-105. Nutrition education.

Nutrition education, including nutritional value, food preparation, storage, and safety, shall be provided for recipients by a collaborative effort between the Department of Health and the University of Arkansas Cooperative Extension Service.

History. Acts 1993, No. 1218, § 5.

20-83-106. Farmer or vendor participation.

(a) To qualify for redemption of the nutrition supplement coupons, all farmers or vendors shall be Arkansas producers or shall represent Arkansas producers trained by the University of Arkansas Cooperative Extension Service to participate in the Arkansas Farmers' Market Nutrition Program.

(b) All produce exchanged for nutrition supplement coupons shall be fresh and unprocessed fruits, vegetables, or nuts grown in Arkansas.

History. Acts 1993, No. 1218, § 6.

20-83-107. Rules and regulations.

To the extent that funds are available, the Department of Health is authorized to enforce this subchapter and to promulgate necessary rules and regulations to implement this subchapter.

History. Acts 1993, No. 1218, § 7.

CHAPTER 84

ARKANSAS WOMEN'S COMMISSION

SECTION.
20-84-101 — 20-84-103. [Repealed.]

20-84-101 — 20-84-103. [Repealed.]

Publisher's Notes. This chapter was repealed by Acts 1999, No. 661, §§ 1-3. The chapter was derived from the following sources:

20-84-101. Acts 1997, No. 699, § 1.
20-84-102. Acts 1997, No. 699, § 2.
20-84-103. Acts 1997, No. 699, § 3.

CHAPTER 85

MATERNAL DRUG ADDICTION

SECTION.
20-85-101. Family Treatment and Rehabilitation Program for Ad-

dicted Women and their Children.

20-85-101. Family Treatment and Rehabilitation Program for Addicted Women and their Children.

(a) There is hereby created the Family Treatment and Rehabilitation Program for Addicted Women and their Children within the University of Arkansas for Medical Sciences.

(b) The program shall:

- (1) Develop a statewide program of treatment, rehabilitation, prevention, intervention, and relevant research for families affected by maternal addiction by coordinating existing health services, human services, and education and employment resources;

(2) Develop resources for local treatment and rehabilitation programs for families affected by maternal addiction by providing policy research, technical assistance, and evaluation of program outcomes;

(3) Identify gaps in service delivery to families affected by maternal addiction and propose solutions;

- (4) Enter into contracts for the delivery of services under the program;
 - (5) Solicit, accept, retain, and administer gifts, grants, or donations of money, services, or property for the administration of the program; and
 - (6) Provide centralized billing for providers who agree to provide a comprehensive array of specialized coordinated services under or through the program.
- (c) The program shall report quarterly to the Subcommittee on Children and Youth of the House Committee on Aging, Children and Youth, Legislative and Military Affairs and the Senate Committee on Children and Youth.

History. Acts 1997, No. 964, § 1.

CHAPTER 86

FAMILY SAVINGS INITIATIVE ACT

SECTION.	SECTION.
20-86-101. Title.	20-86-108. Penalty.
20-86-102. Declaration.	20-86-109. Matching funds.
20-86-103. Purpose.	20-86-110. Effect on other programs.
20-86-104. Definitions.	20-86-111. Reporting requirements.
20-86-105. Proposals.	20-86-112. Implementation.
20-86-106. Individual development account.	20-86-113. Reports — Recommendations.
20-86-107. Individual development account — Purpose.	

Effective Dates. Acts 1999, No. 1217, § 16: July 1, 1999.

Acts 1999, No. 1217, § 20: Apr. 7, 1999.

Emergency clause provided: “It is hereby found and determined by the Eighty-second General Assembly that the first individuals to be affected by the two (2) year lifetime limit on Transitional Employment Assistance will soon reach that limit. This act will help those individuals to make the transition from welfare to long-term economic self-sufficiency. Therefore, an emergency is declared to

exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

20-86-101. Title.

This subchapter, § 19-5-999, and § 26-51-404(b)(23) shall be known and may be cited as the “Family Savings Initiative Act”.

History. Acts 1999, No. 1217, § 1.

20-86-102. Declaration.

The General Assembly hereby finds that:

(1) Americans of most economic classes are having increasing difficulty climbing the economic ladder. Fully half of all Americans have negligible or no investable assets just as the price of entry to the economic mainstream such as the cost of a house, starting a business, obtaining an adequate education, establishing a retirement account, or purchasing an automobile is increasing;

(2) Economic well-being does not come solely from income, spending, and consumption but also requires savings, investment, and accumulation of assets, since assets can improve economic stability, connect people to a viable and hopeful future, stimulate development of human and other capital, enable people to focus and specialize, yield personal and social dividends, and enhance the welfare of offspring;

(3) There is an urgent need for new means for Americans to navigate the labor market and to provide incentives and means for employment, upgrading, mobility, and retention;

(4) The household savings rate of the United States lags far behind other industrial nations, presenting a barrier to economic growth. The State of Arkansas should develop policies such as individual development accounts that promote higher rates of personal savings and net private domestic investment;

(5) In the current fiscal environment, the State of Arkansas should invest existing resources in high-yielding initiatives. There is reason to believe that the financial returns, including increased income, tax revenue, and decreased welfare cash assistance, of individual development accounts will far exceed the cost of investment;

(6) Hundreds of thousands of Arkansans continue to live in poverty. Poverty is a loss of human resources, an assault on human dignity, and a drain on social and fiscal resources of this state. Traditional public assistance programs concentrating on income and consumption have rarely been successful in promoting and supporting the transition to economic self-sufficiency; and

(7) Income-based social policy should be complemented with asset-based social policy because while income-based policies ensure that consumption needs, including food, child care, rent, clothing, and health care are met, asset-based policies provide the means to achieve economic self-sufficiency and to climb the economic ladder.

History. Acts 1999, No. 1217, § 3.

20-86-103. Purpose.

The purpose of the Family Savings Initiative Act is to provide for the establishment of individual development accounts designed to:

(1) Provide individuals and families with limited means an opportunity to accumulate assets;

(2) Facilitate and mobilize savings;

- (3) Promote home ownership, microenterprise development, education, saving for retirement, and automobile purchase; and
- (4) Stabilize families and build communities.

History. Acts 1999, No. 1217, § 2.

20-86-104. Definitions.

As used in this subchapter:

- (1)(A) “Administrative costs” includes, but is not limited to, soliciting matching funds, processing fees charged by the fiduciary organization or financial institution, and traditional overhead costs.
- (B) Administrative costs shall be limited to no more than ten percent (10%) of the contract;
- (2) “Department” means the Department of Human Services;
- (3) “Eligible educational institution” means the following:
 - (A) An institution described in 20 U.S.C., § 1088(a)(1) or § 1141(a), as such sections are in effect on January 1, 2000;
 - (B) An area vocational education school, as defined in 20 U.S.C., § 2471(4), subparagraph (C) or (D), as such section is in effect on January 1, 2000; and
 - (C) Any other accredited education or training organization;
- (4) “Federal poverty level” means the poverty income guidelines published for a calendar year by the United States Department of Health and Human Services;
- (5) “Fiduciary organization” means the organization that will serve as an intermediary between an individual account holder and a financial institution holding account funds. A fiduciary organization shall be a not-for-profit organization described in § 501(c)(3) of the Internal Revenue Code of 1986, 26 U.S.C., § 501(c)(3), as in effect on January 1, 2000;
- (6) “Financial institution” means an organization authorized to do business under state or federal laws relating to financial institutions and includes, but is not limited to, a bank, trust company, savings bank, building and loan association, savings and loan company or association, or credit union;
- (7) “Individual development account” means an account created pursuant to this subchapter exclusively for the purpose of paying the expenses of an eligible individual or family for the purposes set forth in § 20-86-107;
- (8) “Net worth” means the aggregate market value of all assets that are owned in whole or in part by any member of the household, less the obligations or debts of any member of the household;
- (9) “Operating costs” includes, but is not limited to, costs of training individual development account participants in economic and financial literacy and individual development account uses, marketing participation, counseling participants, and conducting required verification and compliance activities;
- (10) “Postsecondary educational expenses” means:

(A) Tuition and fees required for the enrollment or attendance of an individual development account holder or immediate family member thereof who is a student at an eligible educational institution; and

(B) Fees, books, supplies, and equipment required for courses of instruction for an individual development account holder or immediate family member thereof who is a student at an eligible educational institution;

(11) "Qualified acquisition costs" means:

(A) The costs of acquiring, constructing, or reconstructing a residence to be occupied by an individual development account holder or an immediate family member thereof, including, but not limited to, any usual or reasonable settlement, financing, or other closing costs; and

(B) The costs of acquiring or repairing a motor vehicle to be used by an individual development account holder or an immediate family member thereof, including, but not limited to, any taxes, insurance, or registration costs incurred in acquiring a motor vehicle;

(12) "Qualified business" means any business that does not contravene any law or public policy;

(13) "Qualified business capitalization expenses" means qualified expenditures for the capitalization of a qualified business pursuant to a qualified plan;

(14) "Qualified emergency withdrawals" means a withdrawal by an eligible individual that is a withdrawal of only those funds or a portion of those funds deposited by the individual in the individual development account of the individual and that is permitted by a fiduciary organization on a case-by-case basis in accordance with the rules established by the department;

(15) "Qualified expenditures" means expenditures included in a qualified plan, including, but not limited to, capital, plant, equipment, working capital, and inventory expenses;

(16) "Qualified first-time home buyer" means an individual who has no ownership interest in a principal residence during the three-year period ending on the date of acquisition of the principal residence to which this subchapter applies;

(17) "Qualified plan" means a plan for the operation of a business by an individual development account holder or an immediate family member thereof which:

(A) Is approved by a financial institution or by a nonprofit microenterprise program or loan fund, having demonstrated business expertise;

(B) Includes a description of services or goods to be sold, a marketing plan, and projected financial statements; and

(C) May require the eligible individual to obtain the assistance of an experienced entrepreneurial advisor; and

(18) "Qualified principal residence" means a principal residence within the meaning of § 1034 of the Internal Revenue Code of 1986, 26

U.S.C., § 1034, as in effect on January 1, 2000, of an individual development account holder or an immediate family member thereof, the qualified acquisition costs of which do not exceed the average area purchase price applicable to such residence, determined in accordance with paragraphs (2) and (3) of § 143(e) of the Internal Revenue Code, 26 U.S.C., § 143(e)(2) and (3), as in effect on January 1, 2000.

History. Acts 1999, No. 1217, § 4.

20-86-105. Proposals.

(a)(1) The Department of Human Services shall enter into contracts with one (1) or more fiduciary organizations pursuant to the provisions of this section in such a manner that different regions of the state are served by one (1) or more fiduciary organizations.

(2)(A) An organization based in this state which desires to enter into such a contract shall submit a proposal to the department for the right to be approved as a fiduciary organization.

(B) Proposals shall be made upon forms prescribed by the department and shall contain such information as the department may require.

(b) Organizations' proposals shall be evaluated and contracts awarded by the department on the basis of such items as geographic diversity and an organization's:

(1) Ability to market the project to potential account holders;

(2) Ability to leverage additional matching and operating funds;

(3) Ability to provide safe and secure investments for individual accounts;

(4) Overall administrative capacity, including, but not limited to, the certifications or verifications required to assure compliance with eligibility requirements, authorized uses of the accounts, matching contributions by individuals or businesses, and penalties for unauthorized distributions;

(5) Capacity to provide financial counseling and other related service to potential participants;

(6) Capacity to provide other activities designed to increase the independence of individuals and families through home ownership, small business development, enhanced education and training, saving for retirement, and automobile purchase, or to provide links to such other activities; and

(7) Operating costs.

(c)(1) For each contract entered into pursuant to the provisions of this section, the contract shall begin no later than October 1 of each year.

(2)(A) The fiduciary organization shall use not less than seventy percent (70%) for matching funds and not more than thirty percent (30%) for operating and administrative costs.

(B) Administrative costs shall be limited to ten percent (10%) of the contract.

(d) Responsibilities of a fiduciary organization shall include, but not be limited to, marketing participation, soliciting matching contributions, counseling project participants, conducting basic economic and financial literacy training and individual development account use training for project participants, and conducting required verification and compliance activities.

(e) Neither a fiduciary organization nor an employee of or person associated with a fiduciary organization shall receive anything of value, other than compensation for services, for any act performed in connection with the establishment of an individual development account or in furtherance of the provisions of this subchapter.

History. Acts 1999, No. 1217, § 5.

20-86-106. Individual development account.

(a) An individual who is a resident of this state may submit an application to open an individual development account to a fiduciary organization approved by the Department of Human Services pursuant to the provisions of § 20-86-105. The fiduciary organization shall approve the application only if:

(1) The individual has gross household income from all sources for the calendar year preceding the year in which the application is made which does not exceed one hundred eighty-five percent (185%) of the federal poverty level; and

(2) The individual's household net worth at the time the individual development account is opened does not exceed ten thousand dollars (\$10,000) disregarding the primary dwelling and one (1) motor vehicle owned by the household.

(b) An individual opening an individual development account shall be required to enter into an individual development account agreement with the fiduciary organization.

(c) The fiduciary organization shall be responsible for coordinating arrangements between the individual and a financial institution to open the individual's individual development account.

(d)(1)(A) Each fiduciary organization shall provide written notification to each of its eligible individual development account holders of the amount of matching funds provided by the fiduciary to which each such individual development account holder is entitled.

(B) Such notification shall be made at such intervals as the fiduciary organization deems appropriate but shall be required to be made at least once each calendar year.

(2) The amount of such matching funds for each individual development account holder shall be three dollars (\$3.00) for each one dollar (\$1.00) contributed to the individual development account by the individual development account holder during the preceding calendar year. The amount of such matching funds shall not exceed two thousand dollars (\$2,000) per individual development account holder or four thousand dollars (\$4,000) per household.

(3) If the amount of matching funds available is insufficient to disburse the maximum amounts specified in this subsection, amounts of disbursements shall be reduced proportionately based upon available funds.

(e) If an individual development account holder has gross household income from all sources for a calendar year which exceeds one hundred eighty-five percent (185%) of the federal poverty level, the individual development account holder shall not be eligible to receive funds pursuant to the provisions of subsection (d) of this section in the following year.

(f)(1) In the event of an individual development account holder's death, the account may be transferred to the ownership of a contingent beneficiary or beneficiaries. An account holder shall name a contingent beneficiary or beneficiaries at the time that the account is established and may change the beneficiary or beneficiaries at any time.

(2) If the named beneficiary or beneficiaries are deceased or cannot otherwise accept the transfer, the moneys shall be transferred to the fiduciary organization to redistribute as matching funds.

History. Acts 1999, No. 1217, § 6.

20-86-107. Individual development account — Purpose.

(a) Individual development accounts may be used for any of the following qualified purposes:

(1) Qualified acquisition costs with respect to a qualified principal residence for a qualified first-time home buyer or the costs of major repairs or improvements to a qualified principal residence, if paid directly to the persons to whom the amounts are due;

(2) Amounts paid directly to a business capitalization account which is established in a federally insured financial institution and is restricted to use solely for qualified business capitalization expenses consistent with a qualified plan;

(3) Postsecondary educational expenses paid directly to an eligible educational institution;

(4) Amounts paid directly to an individual retirement account or education individual retirement account established pursuant to federal law in the name of the individual development account holder or an immediate family member thereof;

(5) Qualified acquisition costs with respect to the purchase of an automobile or costs of repair of an automobile, if paid directly to a licensed automobile dealer or repair shop. Such a purpose cannot be the sole purpose of the individual development account. Participants must also save for another approved purpose; and

(6) Qualified emergency withdrawals.

(b) However, federal Temporary Assistance for Needy Families matching funds shall only be used for the purposes set forth in subdivisions (a)(1)-(3) of this section.

History. Acts 1999, No. 1217, § 7.

20-86-108. Penalty.

(a)(1) If the fiduciary organization receives evidence that moneys withdrawn from individual development accounts are withdrawn under false pretenses or are used for purposes other than for the approved purposes indicated at the time of the withdrawal, the fiduciary organization shall make arrangements with the financial institution to impose a penalty of loss of matches and may, at its discretion, close the account.

(2) All penalties collected by fiduciary organizations shall remain with the fiduciary organization to distribute as matching funds to other eligible individuals.

(b) The fiduciary organization shall establish a grievance committee and a procedure to hear, review, and decide in writing any grievance made by an individual development account holder who disputes a decision of the operating organization that a withdrawal is subject to penalty.

(c) Each fiduciary organization shall establish such procedures as are necessary, including prohibiting eligibility for further matching funds, to ensure compliance with this section.

History. Acts 1999, No. 1217, § 8.

20-86-109. Matching funds.

(a) Any individual, business, organization, or other entity may contribute matching funds to a fiduciary organization. The funds shall be designated to the fiduciary organization to allocate to all its participants on a proportionate basis.

(b)(1) A credit shall be allowed against the income tax liability imposed by the Income Tax Act of 1929, § 26-51-101 et seq., for any Arkansas taxpayer who contributes to a fiduciary organization created pursuant to this subchapter in an amount equal to fifty percent (50%) of the amount of matching funds contributed to a fiduciary organization during the calendar year.

(2) The amount of the credit that may be used by a taxpayer for a taxable year shall not exceed the lesser of twenty-five thousand dollars (\$25,000) or the amount of individual or corporate income tax otherwise due.

(c) Any unused credit may be carried over for a maximum of three (3) years up to a total tax credit allowed in the amount of twenty-five thousand dollars (\$25,000).

(d)(1)(A) To claim the benefits of this section, a taxpayer must notify the fiduciary organization that the taxpayer intends to make a contribution and the amount of the contribution.

(B) The fiduciary organization shall then notify the Department of Human Services and request a certification from the department

certifying the amount of the tax credit to which the taxpayer is entitled.

(C) The fiduciary organization shall deliver the certification to the taxpayer upon receipt of the contribution.

(2) A taxpayer must file the certificate with the taxpayer's income tax return for the first year in which the taxpayer claims a tax credit under this subchapter.

(e) The total amount of tax credits certified under this subchapter shall not exceed one hundred thousand dollars (\$100,000) per calendar year.

(f) The Department of Finance and Administration shall promulgate any regulations necessary to carry out the provisions of this section.

History. Acts 1999, No. 1217, § 9.

20-86-110. Effect on other programs.

Funds deposited in an individual development account shall not be counted as income, assets, or resources of the individual in determining financial eligibility for assistance or services pursuant to any federal, federally assisted, state, or municipal program based on need.

History. Acts 1999, No. 1217, § 15.

20-86-111. Reporting requirements.

Each fiduciary organization shall provide quarterly to the Department of Human Services the following information:

(1) The number of individuals making deposits into an individual development account;

(2) The amounts deposited in the individual development account;

(3) The amounts not yet allocated to individual development accounts;

(4) The amounts withdrawn from the individual development accounts and the purposes for which the amounts were withdrawn;

(5) The balances remaining in the individual development accounts;

(6) The service configurations such as peer support, structured planning exercises, mentoring, and case management which increased the rate and consistency of participation in the demonstration project and how such configurations varied among different populations or communities; and

(7) The number of grievances filed, the resolution of the grievances, and any penalties imposed.

History. Acts 1999, No. 1217, § 11.

20-86-112. Implementation.

The Department of Human Services shall be responsible for implementation of this subchapter and shall promulgate rules as necessary in accordance with the provisions of this subchapter.

History. Acts 1999, No. 1217, § 13.

20-86-113. Reports — Recommendations.

The Department of Human Services shall prepare a written report annually regarding the implementation of the Family Savings Initiative Act and shall make recommendations for improving the program. The report shall be transmitted to the General Assembly on or before August 1 of each year.

History. Acts 1999, No. 1217, § 12.

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University of Arkansas.

School of medicine.

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medical.**

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Health department.

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Alcohol and drug abuse treatment program.

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Alcohol/drug abuse inpatient treatment center.

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Alcoholic.

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Alcoholic beverages.

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Alcoholism.

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Ambulance services.

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American cheese.

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Apothecary.

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Applicant.

Criminal background checks for
emergency medical technicians,
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Appropriate federal agency.

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ArFMNP.

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Artist.

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Assembler.

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Assessment services.

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Assisted living services.

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Attempt to perform an abortion.

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Attending physician.

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Authorized person.

Health department.

Public health laboratory, §20-7-114.

Authorized representative.

Elevators, dumbwaiters and
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Manufactured home standards,
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Long-term care facilities, protection of
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Beneficial insects.

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Beneficiary.

Medical assistance, §20-77-702.

Birth admission.

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Birthing hospital.

Newborn hearing, screening, tracking
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Blood.

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Blood component.

Alcohol and drug abuse, §20-64-503.

Body piercing.

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Boiler.

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Branding.

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Bread.

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Criminal background checks,
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Criminal background checks for
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Butter.

Milk and dairy products, §20-59-201.

By-product material.

Radiation protection, §20-21-203.

Calibration sources-consulting services.

Radiation protection, §20-21-203.

Candle.

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Canned food.

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Capable of use as human food.

Catfish marketing, §20-61-202.

Cardiopulmonary resuscitation.

Emergency medical services.
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Care.

Criminal background checks,
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Criminal background checks for
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Criminal background checks for
emergency medical technicians,
§20-13-1101.

Care and maintenance.

Cemeteries, §20-17-1002.

Case.

Eggs, §20-58-202.

Casein.

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Case management.

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Case review.

Treatment of mentally ill, §20-47-502.

CASSP.

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Category I response.

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Toxicology laboratory services,
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Category I-A hospital.

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Category I nonfriable

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Category I-B hospital.

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Radiation protection, §20-21-203.

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Catfish.

Fish and seafood, §20-61-202.

Cats.

Rabies control, §20-19-302.

Cemetery.

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Cemetery company.

Perpetually maintained cemeteries,
§20-17-1002.

Central registry check.

Criminal background checks for
developmental disabilities service
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Certificate.

Asbestos removal, §20-27-1003.

Health facilities and services.

Utilization review, §20-9-902.

Certification.

Criminal background checks for
emergency medical technicians,
§20-13-1101.

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§20-13-202.

Certified applicator.

Pesticides, §20-20-203.

Certified fire department.

Fire protection services, §20-22-802.

Certifying agency.

Criminal background checks for
emergency medical technicians,
§20-13-1101.

Cheddar cheese.

Milk and dairy products, §20-59-201.

Cheese.

Milk and dairy products, §20-59-201.

Chief executive officer.

Nuclear planning and response grants,
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Child.

Putative father registry, §20-18-701.

Child care appeal review panel,
§20-78-202.

Child care facility.

Public health and welfare, §20-78-202.

Children's product.

Children's product safety, §20-27-1602.

DEFINED TERMS —Cont'd**Child with emotional disturbance.**

Treatment of mentally ill, §20-47-502.

Chiropractor.

Radiation protection, §20-21-203.

Civil penalty.

Radiation protection, §20-21-203.

Claim.

Medicaid fraud, §20-77-901.

Medical assistance programs integrity law, §20-77-1303.

Claimant.

Medical assistance, §20-77-702.

Class A license.

Home health care services, §20-10-801.

Class B license.

Home health care services, §20-10-801.

Client.

Mental illness and substance abuse, §20-46-601.

Clock hour.

Long-term care facilities and services, §20-10-101.

Collaborative evaluation.

Treatment of mentally ill, §20-47-502.

Collateral source.

Medical assistance, §20-77-702.

Columbarium.

Cemeteries, §20-17-1002.

Commence construction.

Health services agency, §20-8-109.

Commercial applicator.

Pesticides, §20-20-203.

Commercial medical waste.

Disposal, §20-32-101.

Commercial user.

Children's product safety, §20-27-1602.

Common control.

Alcohol and drug abuse, §20-64-503.

Community-based agency.

Older worker employment, §20-80-203.

Community mental health center.

Treatment of mentally ill, §20-47-202.

Community organization.

Urban homestead act, §20-80-403.

Community public water system,

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Community service.

Older worker employment, §20-80-203.

Public assistance, §20-76-402.

Compound.

Drug abuse control, §20-64-302.

Concentrated milk.

Milk and dairy products, §20-59-201.

Concentrated skimmed milk.

Milk and dairy products, §20-59-201.

Condensed milk.

Milk and dairy products, §20-59-201.

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Milk and dairy products, §20-59-201.

Construct.

Health department.

Building and local grants, §20-7-202.

Consumer.

Eggs, §20-58-202.

Container.

Eggs, §20-58-202.

Meat inspection, §20-60-203.

Contaminated with filth.

Food, drug and cosmetic act, §20-56-202.

Contraceptives procedures.

Family planning, §20-16-303.

Contraceptives supplies.

Family planning, §20-16-303.

Contractor.

Asbestos removal, §20-27-1003.

Blasting, §20-27-1302.

Contributing beneficiary.

Medical assistance, §20-77-702.

Controlled substance.

Alcohol and drug abuse, §20-64-503.

Conversion of services.

Health services agency, §20-8-101.

Cooperative agreement.

Nuclear planning and response grants, §20-21-501.

Cooperative association.

Milk processors, §20-59-601.

Coordinate.

Treatment of developmentally disabled, §20-48-202.

Cosmetic.

Food, drug and cosmetic act, §20-56-202.

Cost-sharing.

Medicaid, §20-77-1203.

Cotrustees of the special needs trust revolving fund.

Medical assistance, §20-77-702.

Counterfeit drug.

Drug abuse control, §20-64-302.

Counterfeit substance.

Food, drug and cosmetic act, §20-56-202.

Coupon.

Food, §20-83-103.

Court.

Putative father registry, §20-18-701.

CPR.

Emergency medical services.

Do not resuscitate orders, §20-13-901.

Cream.

Milk and dairy products, §20-59-201.

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Dairy processor.

Milk laboratory antibiotics, §20-59-701.

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Dispense.

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Pesticides, §20-20-203.

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§20-22-1003.**Fire protection sprinkler system.**

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Food.

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Free-standing birthing center,

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Full-time education or training.

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fluorescence devices.**

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of Arkansas.**

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Grade "A" milk producer.

Grade "A" milk program, §20-59-502.

Grantor.

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Gross receipts.

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Guardian.

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Long-term care facilities and services.

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rehabilitation.**

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Hearing loss.

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Newborn hearing, screening, tracking
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Homestead.

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Horse power.

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Human development center.

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Milk and dairy products, §20-59-201.

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Milk and dairy products, §20-59-201.

Immediate container.

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Imminent health hazard.

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Industrial units.

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Ocular practitioner.

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Long-term care facilities, protection of residents, §20-10-1202.

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Open pit mine.

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Operator.

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Packer.

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Parent.

Abortions.

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Part.

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Pay pond.

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Reciprocity.

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Recoupment.

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Recuperation center.

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Referring physician.

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Region.

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Registrant.

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Service.

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Sponsor.

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State.

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Statewide plan.

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Station operator.

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Stillbirth.

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Subsidized private sector employment.

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Suicidal.

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Supervise.

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Supervisor.

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Support services.

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Surgeon.

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Surplus charges.

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Surveys.

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Sweet cream.

Milk and dairy products, §20-59-201.

Sweetened concentrated skimmed milk.

Milk and dairy products, §20-59-201.

Sweetened condensed milk.

Milk and dairy products, §20-59-201.

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Milk and dairy products, §20-59-201.

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TEA.

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Tenant.

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Terminal condition.

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Test.

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Truck route.

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Trust.

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Twenty-four hour nursing.

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Veterinarian.

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Weed.

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Whey.

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Whole milk.

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Wholesale dealer and distributor.

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Wholesaler.

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Wholesome.

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Wireline service operation.

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Withhold payment.

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